

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE:  
NATIONAL PRESCRIPTION  
OPIATE LITIGATION

Case No. 1:17-md-2804  
Cleveland, Ohio

CASE TRACK THREE

October 7, 2021  
9:00 A.M.

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**VOLUME 4**

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TRANSCRIPT OF JURY TRIAL PROCEEDINGS,  
BEFORE THE HONORABLE DAN A. POLSTER,  
UNITED STATES DISTRICT JUDGE,  
AND A JURY.

- - - - -

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08:54:54

08:55:00

1                   THURSDAY, OCTOBER 7, 2021, 9:00 A.M.

2                   THE COURT: Okay. Anything anyone needs to  
3 bring to my attention before we bring in the jury?

4                   MR. LANIER: Just one matter, Your Honor.

09:00:48 5                   We have two different representatives today  
6 from the counties.

7                   THE COURT: Okay. If you want to introduce  
8 them, that's fine.

9                   MR. LANIER: I don't want to.

09:00:55 10                  THE COURT: Okay.

11                  MR. LANIER: I just want to warn the Court  
12 that one of them gave a deposition but he's not listed as  
13 a witness on anyone's case and so we think it's okay for  
14 him to be here.

09:01:03 15                  He's not our one that is excused under the  
16 Rule, but I didn't want the Court to think I brought in  
17 someone who might be a witness.

18                  He's not a witness on anyone's list even  
19 though he gave a deposition.

09:01:14 20                  That's all we have, Your Honor.

21                  THE COURT: That's fine. Okay.

22                  All right. I think one of the jurors  
23 suggested that it would be helpful if counsel at least  
24 for a while identifies themselves and who they're  
09:02:03 25 representing.

1                   Particularly for the defendants.

2                   I think everyone knows Mr. Lanier's  
3                   representing the plaintiffs so that will be helpful for  
4                   the jury.

09:02:12 5                   MR. MAJORAS: And they were having trouble  
6                   hearing Mr. Bush yesterday.

7                   THE COURT: Yeah, I was, too.

8                   Mr. Bush, you probably like me, you have a  
9                   tendency to lower your voice as you go, and when it gets  
09:02:23 10                  low and the sound isn't great, so if you can try and keep  
11                  it up as much as possible.

12                  MR. BUSH: I'm going to try pretty hard  
13                  today.

14                  It may be that -- for some reason it was  
09:02:35 15                  sounding to me like I was very loud.

16                  THE COURT: You weren't.

17                  MR. BUSH: Yeah.

18                  THE COURT: Your volume was okay when you  
19                  started but then you tend to sort of get a little quieter  
09:02:46 20                  and lower in the register and that's when it got hard.

21                  MR. BUSH: I usually don't have that  
22                  problem.

23                  I'll try and solve it today.

24                  THE COURT: Okay. Thanks.

09:02:56 25                  (Jury in.)

1 THE COURT: Okay. Good morning, ladies and  
2 gentlemen.

3 Please be seated.

4 All right. We will continue with  
09:05:02 5 cross-examination of Dr. Lembke, and I want to remind you  
6 you're still under oath from yesterday.

7 And we will all try to speak into the  
8 microphone and keep our voices up. So you may continue,  
9 Mr. Bush.

09:05:18 10 MR. BUSH: Good morning, ladies and  
11 gentlemen of the jury. Can you hear me?

12 THE JURORS: Yes.

13 MR. BUSH: Yes, everybody can hear.  
14 Thanks.

09:05:27 15 CROSS-EXAMINATION OF ANNA LEMBKE (RESUMED)

16 BY MR. BUSH:

17 Q. And, good morning, Dr. Lembke.

18 A. Good morning.

19 Q. Can you hear me?

09:05:32 20 A. Yes.

21 Q. Okay. Hopefully that will go a little better  
22 today. I'll try and speak up louder.

23 I only have a few things that I want to ask  
24 you about this morning, Dr. Lembke.

09:05:46 25 I want to talk generally about your opinion

1 that CVS collaborated with manufacturers to promote  
2 opioids to its pharmacists.

3 You relied in forming that opinion on some  
4 documents from CVS in 2001.

09:06:03 5 Do you recall those?

6 A. Yes.

7 Q. Okay. One of those documents was a document that  
8 was titled "How to Stop Diversion," and let's put that up  
9 on the screen. It's Tab 14.

09:06:18 10 That's one of the documents that you relied  
11 on?

12 A. Well, this document itself is what I relied on, but  
13 it's how the document was used by CVS in its partnership  
14 with Purdue.

09:06:38 15 So it's as much the collaborative efforts  
16 around the document, as the document itself.

17 Q. All right. Well, let's stick with the document.  
18 That's one of the documents you relied on?

19 A. Yes, it is.

09:06:50 20 Q. Okay. And another one of the documents, the other  
21 document that you relied on, was a document that was an  
22 educational services document from 2011, and actually  
23 before you answer that question, let me go back to that  
24 document that is up on the screen is from 2001, right?

09:07:10 25 A. Yes, I believe so.

1 Q. Okay. And then you also relied on the document  
2 from 2011 that was an educational services document, and  
3 that's Tab 12.

4 Again, I think we can put that up on the  
5 screen.

09:07:27

6 A. Yes. That was one of the documents that I relied  
7 on.

8 Q. And as we discussed yesterday in your testimony,  
9 that document, I think you went through it, doesn't  
10 mention opioids anywhere?

09:07:47

11 A. That's correct.

12 Q. And you don't know of any programs that are  
13 discussed in this 2011 document that's up on the screen,  
14 that involved opioids?

09:08:07

15 A. Well, this is a broad approach, which I assume also  
16 involved opioids.

17 Q. Okay. My question is you don't know of any  
18 program -- of any opioids that were involved in that  
19 program; you simply made an assumption?

09:08:22

20 A. I also have no evidence to assume that opioids  
21 weren't involved in that program.

22 Q. But you did not see any indication of any opioid  
23 product that was involved in that program?

24 A. Yes.

09:08:42

25 Q. And these documents that we've looked at here in



1 2001 and 2011 are the documents that you rely on for your  
2 opinion that CVS collaborated with manufacturers to  
3 promote opioids to its pharmacists, and I'm talking about  
4 documents, so let's be clear.

09:09:03 5 A. Yes, I relied on those documents.

6 Q. And putting aside the 2001 letter, you have cited  
7 no communications in your testimony supporting your  
8 opinion and no communications by CVS to its pharmacists  
9 promoting opioids?

09:09:29 10 A. That is not correct.

11 Q. You didn't cite any document that went from CVS to  
12 its pharmacists promoting opioids, other than the letter  
13 in 2001, and if there's something else that you want to  
14 cite would you please tell us now.

09:09:45 15 A. Well, as I discussed yesterday, CVS did send a  
16 letter out to its pharmacists telling them about its  
17 partnership with Purdue around Partners Against Pain,  
18 which is a pro-opioid front group, and as well as a  
19 communication with its pharmacists referring to that  
09:10:09 20 partnership with Purdue.

21 Q. And that --

22 A. Sorry, and also calling Purdue a reliable leader.

23 I can get the exact quote from my report,  
24 but certainly promoting Purdue and promoting Purdue's  
09:10:28 25 message to its pharmacists.

1 Q. And that's a document that was sent in 2001; that  
2 was what I was asking about in my question. That's  
3 behind Tab 13, if you could put that up, John.

4 MR. LANIER: Do you have a copy?

09:10:50 5 MR. BUSH: I'm sorry, do you not have the  
6 document, Your Honor?

7 THE COURT: I don't have it. Are you  
8 showing this --

9 MR. BUSH: Yeah, we're showing it, Your  
09:11:02 10 Honor. It's up on the screen.

11 THE COURT: All right.

12 A. Yes.

13 BY MR. BUSH:

14 Q. So that's the only document that you've cited that  
09:11:11 15 is a communication by CVS to its pharmacists regarding  
16 opioids?

17 A. This is one of the documents that I cited, yes.

18 Q. It's the only document that you've cited in your  
19 testimony, isn't it, Dr. Lembke?

09:11:28 20 A. Well, I've cited this and I cited the other  
21 document that we talked about.

22 Q. I'm talking about communications by CVS to its  
23 pharmacists.

24 A. Yes, this is the only document that I've cited in  
09:11:39 25 that regard around opioids.

1 Q. And you haven't cited in your testimony to the jury  
2 supporting your opinion any communications from CVS to  
3 any patients promoting opioids?

4 A. Can I have a moment to look at my report?

09:12:04 5 Q. I'm not asking you about your report, Dr. Lembke.  
6 Your report's not in evidence.

7 I'm asking whether you've cited any such  
8 document --

9 THE COURT: Wait a minute.

09:12:12 10 When you say, Mr. Bush, "Cited," you've got  
11 to distinguish.

12 Does that mean anywhere? Does that mean  
13 yesterday's testimony? That's what's confusing.

14 MR. BUSH: I will clarify it, Your Honor.

09:12:24 15 BY MR. BUSH:

16 Q. You have not testified about, in support of your  
17 opinion, any communications from CVS to any patients  
18 promoting opioids?

19 Dr. Lembke, with all respect, I'm asking  
09:12:53 20 about whether you've testified about it, so looking at  
21 your report, which is that what you're doing right now.

22 A. Yes, I do believe I testified about it, but before  
23 I answer your question, I want to make sure that I'm  
24 right about that.

09:13:05 25 Q. Yeah, I want to make sure that you're right, too,

1 so --

2 A. Okay. Thank you.

3 (Pause.)

4 So to answer your questions, the Partners  
09:14:51 5 Against Pain website was accessible to patients, so in  
6 collaborating with Purdue around the Partners Against  
7 Pain front group with their website, that was a vehicle  
8 by which through their collaboration with Purdue CVS  
9 could communicate directly with patients.

09:15:14 10 And also to elaborate further on other  
11 supporting evidence for collaboration between Purdue and  
12 CVS, in terms of communications with pharmacists, in  
13 addition to the documents that you and I just discussed  
14 this morning, I did mention yesterday, and I do mention  
09:15:35 15 in my report, multiple educational activities, continuing  
16 medicational -- continuing education activities for  
17 pharmacists that were put on with CVS in collaboration  
18 with Purdue.

19 Q. So let me be real specific, Dr. Lembke.

09:15:53 20 I really asked you about documents, and  
21 activities are not documents.

22 So you haven't cited -- I'm sorry, I  
23 shouldn't use cited -- you haven't testified about any  
24 continuing education document about opioids that CVS used  
09:16:15 25 to communicate with its pharmacists about opioids?

1 A. I mean, all of my opinion is based on documents  
2 that I have reviewed in addition to my knowledge,  
3 experience, and training.

4 So these collaborations around continuing  
09:16:37 5 medical education for pharmacists are based on documents  
6 that I reviewed.

7 Q. But you didn't review any document related to  
8 continuing education?

9 A. As I say in my report, in 2001, CVS wrote a letter  
09:17:02 10 to Purdue Pharma asking Purdue to fund an educational  
11 program they would deliver to pharmacists at their  
12 marketing and operations conference in Nashville,  
13 Tennessee, in September, 2001.

14 In describing their proposed educational  
09:17:20 15 plan, they emphasize pharmacists' role change from one of  
16 dispenser of products to that of a supplier of  
17 information, deliverer of medication, clinical reviewer  
18 of drug therapy, and even disease state manager, and I  
19 quote.

09:17:43 20 Furthermore, CVS requested 46, -- \$46,000  
21 for the continuing education course for pharmacists.

22 Q. And you don't know whether that request was  
23 honored?

24 A. No, but that is a document that I reviewed.

09:17:59 25 Q. And that wasn't a document that communicated with

1 pharmacists?

2 A. It was a document about collaborating with Purdue  
3 to create an educational course for CVS pharmacists.

09:18:15

4 Q. It was not a document that was communicated to  
5 pharmacists, right?

6 A. Yes.

7 Q. And you don't know whether the program was ever  
8 implemented, right?

9 A. Correct.

09:18:24

10 Q. And even if it was implemented, you've never  
11 reviewed any document that was generated in connection  
12 with that request, is that correct?

13 A. I don't believe so since I didn't talk about it in  
14 my report.

09:18:43

15 Q. And this is -- and this is also back in 2001,  
16 correct?

17 A. Yes, it is.

18 Q. In your testimony supporting your opinion  
19 yesterday, you did not testify about any communications

09:18:58

20 from CVS -- and I'm being careful with my words, I'm  
21 talking about a communication from CVS -- to any doctors  
22 promoting opioids.

23 Do you agree?

24 I'm asking about your testimony supporting  
09:19:13 25 your opinion.

1 A. Again, I would say that the CVS partnership with  
2 the Purdue Pro-Opioid Front Group, Partners Against Pain,  
3 was effectively a way of communicating with prescribers,  
4 with doctors.

09:19:29 5 Q. And you haven't cited or testified  
6 about -- withdrawn about cited.

7 You haven't testified about any actual  
8 communication from CVS to any doctors regarding opioids?

9 A. Again, what I testified was that in their own  
09:19:52 10 words, CVS talked about their collaboration with Purdue  
11 around Partners Against Pain, and Partners Against Pain  
12 website included such subheadings as Barriers to  
13 Effective Cancer Pain Management, a review of the  
14 literature, including the following, the majority of  
09:20:12 15 physicians and nurses fear that opioid use will result in  
16 addiction, but the risk for addiction is low in patients  
17 with no history of substance abuse. There is little or  
18 no tolerance. They have to overcome their fear of  
19 opioids.

09:20:27 20 To me, that's clearly a communication to  
21 doctors, to prescribers.

22 Q. CVS did not send that letter that we talked about  
23 before to doctors, right? It's sent to its own  
24 pharmacists?

09:20:42 25 A. That's correct.

1 Q. And you haven't testified about any communication  
2 by CVS to doctors or prescribers regarding Partners in  
3 Pain or opioids in general?

4 A. I haven't testified about any communication  
09:21:00 5 directly from CVS to prescribers, but again, I did  
6 testify that in collaborating with Purdue around Partners  
7 Against Pain, they were effectively communicating with  
8 prescribers.

9 MR. BUSH: I have no further questions,  
09:21:19 10 Dr. Lembke.

11 Thank you for your time.

12 And just in the interests of knowing how  
13 this is working going forward, since I may be standing up  
14 here again, are you able to hear me better today?

09:21:29 15 THE WITNESS: Yes, it was better.

16 Thank you.

17 MR. BUSH: Terrific.

18 Thank you.

19 I pass the witness, Your Honor.

09:21:39 20 THE COURT: Okay. That's fine.

21 I think Mr. Majoras from Walmart is next.

22 MR. MAJORAS: Thank you, Your Honor.

23 CROSS-EXAMINATION OF ANNA LEMBKE

24 BY MR. MAJORAS:

09:22:03 25 Q. Good morning, Your Honor. Good morning, ladies and



1 gentlemen. Good morning, Dr. Lembke.

2 Are you able to hear me okay?

3 A. Yes.

09:22:14

4 Q. Please, as with everyone else, if at some point you  
5 cannot hear me, please let me know and I'll be happy to  
6 start over.

7 As Judge Polster mentioned, my name is John  
8 Majoras, I'm one of the lawyers for Walmart in this case.

09:22:24

9 And I have some questions. I'm going to  
10 jump around a little bit. I don't want to cover what's  
11 been covered so if I lose you a little bit, let me know  
12 and I'll be happy to start over.

13 A. Thank you.

09:22:35

14 Q. Yesterday you testified or you talked about your  
15 book, *Drug Dealer, MD*, which I'm holding in my hand, is  
16 that right?

17 A. Yes.

09:22:48

18 Q. And that, in your testimony, was your best effort  
19 to explain the causes of the paradigm shift in opioid  
20 prescribing behavior, correct?

21 A. Yes.

22 Q. And --

23 A. In 2016.

24 Q. So it was published in 2016, correct?

09:22:55

25 A. Yes.

1 Q. If we could pull that up on the screen, please.

2 While that's being done, you have an index  
3 in the back of that book, correct?

4 A. Yes.

09:23:05 5 Q. The index is a handy way for someone reading it to  
6 find particular topics they might be interested in?

7 A. Yes.

8 Q. It's in alphabetical order like most indexes?

9 A. Yes.

09:23:18 10 Q. You would agree with me that the phrase  
11 "Pharmacies" is not in the index.

12 Is that correct?

13 A. I would have to take a look.

14 I know that the word "Pharmacies" is in the  
09:23:30 15 book, but it may not be in the index.

16 Q. Well, let's take a look.

17 If we could turn to Page 171 of the index,  
18 please. It's actually 171 of the book but includes the  
19 index, and if we could go, if it's possible to blow up  
09:23:47 20 where the Ps are on that, please.

21 Now, you would agree if the word pharmacy  
22 was in your index, it would be in this section right  
23 here?

24 A. Yes.

09:24:02 25 Q. And it's not, is it?

1 A. No.

2 Q. You talked about chain pharmacies quite a bit in  
3 your testimony yesterday.

4 Is the phrase "Chain pharmacies" in your  
09:24:13 5 index?

6 A. Probably not.

7 Q. Let's verify. Why don't we turn to Page 168,  
8 please.

9 And if we can blow that up for where the Cs  
09:24:29 10 are.

11 You would agree just as a matter of  
12 alphabetical indexing, if the phrase "Chain pharmacy"  
13 were in your index, it would appear right here, correct?

14 A. Yes.

09:24:55 15 Q. Your book was peer-reviewed, right?

16 A. Yes.

17 Q. And I believe you told us yesterday that  
18 peer-reviewed articles and books set a standard of  
19 quality that can be relied upon, right?

09:25:09 20 A. Yes.

21 Q. So --

22 A. Usually, hopefully. Sometimes not.

23 Q. In fact, you've been a peer reviewer of books and  
24 articles, right?

09:25:20 25 A. Yes.

1 Q. So if the peer reviewers thought you had left out  
2 something critical to your book, is that the type of an  
3 edit or suggestion they would make to you?

4 A. I mean, the key thing when you're writing a book  
09:25:33 5 and when you're reviewing a book is what is the book  
6 about.

7 And my book was expressly about the opioid  
8 epidemic from the perspective of physician prescribers.

9 So peer reviewers would have seen it  
09:25:51 10 through that lens. The book was not about the opioid  
11 epidemic from the perspective of pharmacies, chain  
12 pharmacists.

13 Q. But one of the principal reasons you wrote the  
14 book, I believe you said this, was to explain the causes  
09:26:06 15 of that paradigm shift, right?

16 A. That is true.

17 Q. And you talked about the causes in your testimony  
18 yesterday, that as you see them, correct?

19 A. Yes. But again, the book is called *Drug Dealer*,  
09:26:17 20 *MD*. It's not called drug dealer, pharm D, although I  
21 could probably write that book now.

22 Q. After you've been working on this case with the  
23 plaintiffs' lawyers, right?

24 A. After I've had the opportunity to read many  
09:26:30 25 documents that were not available to me prior to working

1 on this case.

2 Q. But you have not, in your book in 2016, if you look  
3 at the bottom of the first page -- maybe you recall it.

4 I can hand you the book if you need. One of the things  
09:26:44 5 you said in the subheading was the book is about how  
6 doctors were duped.

7 Correct?

8 A. Yes. That is what the book was about.

9 Q. Were pharmacists duped?

09:26:55 10 A. I think many front line pharmacists were duped by  
11 their own corporate leaders.

12 Q. So you mentioned that yesterday.

13 Does that include corporate leaders at  
14 Walmart?

09:27:04 15 A. Yes.

16 Q. Which ones?

17 A. I didn't look at it by individual names.

18 I looked at these -- the evidence in  
19 aggregate.

09:27:13 20 Q. Well, you would acknowledge that being here  
21 accusing someone or a company as being the cause of the  
22 opioid crisis is a pretty significant charge, right?

23 A. Of course.

24 Q. So having done your work in this case, you say the  
09:27:27 25 pharmacists look like they may have been fooled, right?

1 A. Yes.

2 I believe that the front line pharmacists  
3 were at the mercy of corporate -- a corporate pharmacy  
4 business that did not allow the pharmacists to enact  
09:27:51 5 their corresponding responsibility for a number of  
6 different reasons, one of them being that they didn't  
7 provide them with accurate education about opioids.

8 They partnered, instead, with Purdue, who  
9 was rolling out misleading messages.

09:28:07 10 Q. Who, Dr. Lembke? Who at Walmart knew that there  
11 were misleading messages from Purdue or anyone else and  
12 passed that along to the pharmacists?

13 A. What's --

14 Q. Not what.

09:28:21 15 Who, ma'am?

16 A. Yeah, sorry, I'm trying to formulate my answer.

17 My opinion is based on aggregate evidence  
18 demonstrating that Walmart corporate leadership in  
19 aggregate partnered with Purdue and others to mislead  
09:28:54 20 front line pharmacists, and in a way, it doesn't really  
21 matter that it was in 2001 and that maybe pharmacy,  
22 Walmart pharmacy leaders themselves weren't yet aware of  
23 how nefarious Purdue actually was.

24 The simple fact that they opened up the  
09:29:11 25 doors to Purdue coming into their pharmacies and

1 educating their pharmacists and at the same time, did not  
2 create adequate systems to allow their pharmacists to  
3 detect red flags. It's those things combined, it's the  
4 aggregate evidence, that leads me to believe that Walmart  
09:29:31 5 bears some responsibility for the opioid epidemic; not  
6 all of the responsibility, but certainly some  
7 responsibility.

8 Q. Let me break -- let me break some of that down.

9 You said that Walmart, in the aggregate.  
09:29:44 10 I'll try to use that phrase that you just used. Walmart,  
11 I guess corporate leadership, right, in the aggregate?

12 What levels of corporate leadership?

13 A. I don't really break it down at the individual  
14 levels of corporate leadership, but --

09:30:00 15 Q. So sitting here right now in front of this jury,  
16 there's nothing you can tell the jury about the specific  
17 people at Walmart who had misinformation that, in your  
18 opinion, partnered with Purdue to mislead their  
19 pharmacists.

09:30:14 20 Is that right?

21 A. Let me look at my report for a moment and I'll see  
22 if I can find specific names.

23 Q. That would be fine. I haven't seen them.

24 (Pause.)

09:31:23 25 A. While I don't have specific names --

1 Q. That answers my question. That answers my  
2 question, Dr. Lembke.

3 A. Okay.

4 Q. Thank you.

09:31:29 5 Another thing you mentioned, said just a  
6 minute ago, and I want to make sure I understand it, you  
7 said that you referenced 2001 and you said that as of  
8 2001 -- I want to make sure I have this correct -- it  
9 wasn't clear to you that at that time Walmart knew it was  
09:31:46 10 being misled.

11 Is that correct?

12 A. It's not clear to me at that time, but again I  
13 think, as I stated before, the larger point is that  
14 Walmart invited Purdue in to educate its pharmacists and  
09:32:05 15 even took money from Purdue to allow Purdue to do that  
16 education.

17 Q. I think the year is important to me, because  
18 yesterday, you pointed to some Walmart documents that  
19 were dated in the late 1990s.

09:32:19 20 Do you recall that testimony?

21 A. Yes.

22 Q. Is it your testimony that those documents in the  
23 late 1990, in light of what you've just told the jury,  
24 were produced by Walmart with the knowledge that they  
09:32:32 25 were aware of misrepresentations?



1 A. No.

2 That is not my testimony.

3 Q. Thank you.

4 A. My --

09:32:39 5 Q. Thank you, Dr. Lembke.

6 MR. WEINBERGER: Your Honor, could the  
7 witness be permitted to finish her answer and not be cut  
8 off?

9 THE COURT: I agree.

09:32:49 10 Finish your answer, Doctor.

11 A. Yeah.

12 My testimony really hinges on the fact that  
13 Walmart and other defendants actively collaborated with  
14 Purdue and it's not necessarily important whether or not  
09:33:08 15 at that -- at that time in the late 1990s or in 2001 they  
16 fully understood the degree to which Purdue was  
17 manipulating the opioid paradigm shift.

18 It's that they were collaborators. They  
19 were business partners. They took money. They exchanged  
09:33:30 20 data. And at the same time, they did not uphold their  
21 corresponding responsibility to make sure that the  
22 opioids that they were dispensing were being used for  
23 legitimate medical purposes.

24 BY MR. MAJORAS:

09:33:46 25 Q. So, Dr. Lembke, what I'm trying to figure out is

1 that doctors were duped, you made that point, in 2016,  
2 you acknowledged that pharmacists were probably duped,  
3 and I want to find out when you have evidence that  
4 Walmart knew about misrepresentations that you testified  
09:34:03 5 yesterday.

6 So let's go back to pre-2001.

7 Do you have any information saying that  
8 Walmart knew that Purdue or any other manufacturers were  
9 making the misrepresentations you described for us  
09:34:17 10 yesterday?

11 A. So my opinion is based on inferences that come from  
12 the timeline.

13 Certainly, you know, by -- certainly by the  
14 middle of the first decade of the century, but all the  
09:34:36 15 more by 2011, Walmart knew that there was a problem with  
16 opioids, there was a DEA investigation of Walmart.

17 MR. MAJORAS: Objection, Your Honor.

18 The DEA investigation, I'm asking what  
19 evidence she has that Walmart had knowledge about the  
09:34:55 20 misrepresentations prior to 2000.

21 THE COURT: You can ask the question again,  
22 but I -- this is the answer.

23 A. Yeah.

24 So the answer is based on a series of  
09:35:06 25 logical inferences.

1                   The increase in opioid prescribing that  
2 began in the late 1990s and just shot straight up through  
3 the first decade of this century, late 1999 to 2012,  
4 Walmart had a responsibility to -- and should have known  
09:35:31 5 in some point in that first decade of escalating  
6 prescriptions, that there was a serious opioid problem,  
7 including the fact that they were contributing to the  
8 problem because the DEA investigated Walmart pharmacies.

9                   They did that because there were instances  
09:35:49 10 of Walmart pharmacies filling prescriptions for known  
11 pill-mill doctors, Walmart pharmacies filling  
12 prescriptions for known dangerous cocktails, such as  
13 combinations of opioids and Benzodiazepines.

14                   Walmart, in fact, in their memorandum  
09:36:07 15 agreement in 2011 agreed that they were delinquent in  
16 their responsibilities and would try to improve on those.

17                   So it's all of that together. It's not one  
18 thing or another; it's all of that evidence in aggregate  
19 on which I base my opinion.

09:36:25 20 BY MR. MAJORAS:

21 Q.       So I'd like an answer to my question.

22                   My question was in reference to your  
23 testimony about 2001 and your reference to Walmart  
24 documents prior to 2000, do you have evidence, do you  
09:36:35 25 have information that shows that Walmart knew that the

1 information from manufacturers was misinformation, as you  
2 testified?

3 A. I mean, I don't think that Walmart cared one way or  
4 another.

09:36:49 5 I'm not sure Walmart even investigated what  
6 the information was.

7 Walmart partnered with Purdue and then did  
8 not do what they could have done to prevent the opioid  
9 epidemic.

09:37:03 10 Q. When did you first start prescribing opioids as a  
11 doctor in your practice?

12 A. Well, I started prescribing opioids as soon as I  
13 graduated medical school, in my residency and internship.

14 Q. And could you tell us that year, please?

09:37:21 15 A. So that was the late 1990s.

16 Q. And you've estimated in your testimony here that  
17 you came to the realization, you personally in your  
18 practice, came to the realization about 2013 to 2014 --

19 A. That was not -- that was not my testimony.

09:37:37 20 That was not my testimony.

21 Q. Why don't we, if you could, please, pull up your  
22 binder with your deposition transcripts.

23 In particular, the deposition from Track  
24 Three. I'm sorry, you may not have that.

09:37:53 25 Do you have that there?

1 A. I have a big box here. It may well be here.

2 What number is it?

3 MR. LANIER: Is there a copy for me?

4 MR. MAJORAS: I believe it's the first tab.

09:38:04 5 It would show the deposition dated May

6 28th, 2021.

7 THE WITNESS: Is there a number? These are  
8 numbered.

9 MR. MAJORAS: Your Honor, may Mr. Carter  
09:38:22 10 approach with the document?

11 THE COURT: Yes.

12 Doctor, I think Mr. Majoras is referring to  
13 the -- if your binder is like mine, the very first tab  
14 that says your name.

09:38:37 15 THE WITNESS: What does it say?

16 THE COURT: All right. I'm sorry, I had  
17 your binder.

18 I was right up, you know, right on it, but  
19 the question is not to me.

09:38:50 20 MR. LANIER: At least we know what section  
21 it is, Your Honor.

22 MR. MAJORAS: Just glad it wasn't me, Your  
23 Honor.

24 THE COURT: No.

09:38:57 25 THE WITNESS: All right. Where do you want

1 me to look?

2 BY MR. MAJORAS:

3 Q. Showing the tab with the --

4 THE COURT: The first tab. I got it. The  
09:39:04 5 first tab.

6 A. The first tab. Okay. And what page?

7 Q. It's going to be Page 237.

8 Let me ask you just a couple questions,  
9 first, once you're ready.

09:39:33 10 A. Okay. I'm there.

11 Q. So you recall in this case -- you probably did a  
12 number of depositions, anyway you recall you took a  
13 deposition in this case or gave a deposition in this  
14 case, dated May 28th, 2021?

09:39:48 15 A. Yes.

16 Q. And just so the folks in the jury know, a  
17 deposition is giving testimony to questions from lawyers,  
18 correct?

19 A. Yes.

09:39:56 20 Q. Typically it's done in a conference room, but we do  
21 it by Zoom now because of COVID, right?

22 A. Yes.

23 Q. And in that -- in that deposition, you raised your  
24 hand to swear to the truth just like you did here?

09:40:08 25 A. Yes.

1 Q. If you'd turn to Page 237, starting at Line 23, you  
2 had this question: Question starts off, "And I  
3 appreciate that. Was there a point in time by which you  
4 can say definitively you had that awareness? I mean, by  
09:40:24 5 the time you wrote your book, for example, you were aware  
6 of that, correct?"

7 Continuing on to the next page, the answer:  
8 "Yes."

9 "Was there a date prior to the publication  
09:40:35 10 of your book by which you would be comfortable saying  
11 that iterative process had run its course? Your answer:  
12 "Probably about 2013, 2014."

13 Did I read that correctly?

14 MR. WEINBERGER: Objection, Your Honor.  
09:40:48 15 That is not -- it's inconsistent testimony.

16 THE COURT: Overruled. Overruled.

17 BY MR. MAJORAS:

18 Q. Now, you told Mr. Bush yesterday --

19 THE COURT: Hold it.

09:40:57 20 Wait a minute, Mr. Majoras.

21 MR. MAJORAS: I'm sorry.

22 THE COURT: I think you asked the witness  
23 was that her testimony and I don't think she answered.

24 MR. MAJORAS: Thank you, Your Honor.

09:41:05 25 I should know better than that.

1 BY MR. MAJORAS:

2 Q. Did I read that correctly, Dr. Lembke?

3 A. Well --

4 Q. Did I read that correctly?

09:41:13 5 A. You read the words out of context.

6 I very clearly say just prior to this that  
7 it was an iterative process that started in the late -- a  
8 full decade in the early -- starting in the early 2000s.

9 Q. I agree. I agree with that. You're correct.

09:41:29 10 You testified that there was a learning  
11 process that you went through with your background, with  
12 your education, with all of the things we saw in your CV  
13 yesterday which is very impressive, and that you thought  
14 that iterative process had run its course by 2013 to '14,  
09:41:46 15 right?

16 MR. WEINBERGER: Objection, Your Honor.

17 That's exactly my point, that this was not  
18 proper impeachment.

19 THE COURT: Well, hold it.

09:41:52 20 Overruled. Overruled.

21 BY MR. MAJORAS:

22 Q. Now, let me ask you a question.

23 THE COURT: Well, hold, Mr. Majoras. I'm  
24 not going to let you keep -- if you ask a question,  
09:42:03 25 you've got to wait for an answer.



1 MR. MAJORAS: I was just come being back  
2 with that, Your Honor.

3 Thank you.

4 THE COURT: If you don't care about the  
09:42:10 5 question, okay, but --

6 MR. MAJORAS: No, sir.

7 I appreciate that.

8 A. This entire process of my investigating the opioid  
9 epidemic has been an iterative process by which, I mean  
09:42:25 10 at each opportunity that I have access to more evidence,  
11 I review that evidence objectively and I incorporate that  
12 into my opinion.

13 So the iterative process that began in my  
14 investigation and understanding of the causes of the  
09:42:46 15 opioid epidemic began in the early 2000s, when I started  
16 seeing more and more patients coming in addicted to the  
17 opioids their doctors were prescribing.

18 That iterative process continued until I  
19 wrote my book, which, by the way, I finished probably  
09:43:06 20 2015 or so. Books are usually published a full year  
21 before they come out.

22 My book was published in 2016, and my  
23 iterative process has continued to the present day as I  
24 have gained access to more evidence.

09:43:21 25 So learning is an ongoing endeavor.

1 Q. You were first hired by plaintiffs' lawyers in the  
2 opioid litigation in about 2017?

3 A. Late 2017, early 2018, yes.

09:43:45

4 Q. Do you recall yesterday Mr. Bush asked you a few  
5 questions about whether it would be good for  
6 manufacturers to send pharmacists information about new  
7 blood pressure medication.

8 Do you recall that testimony?

9 A. Yes.

09:43:55

10 Q. And you told him it would not be a good idea  
11 because if that information came from the manufacturer,  
12 it would be biased?

13 A. That's not my testimony.

14 I'm happy to tell you what I said again.

09:44:08

15 Q. Well, let me look at directly what I have.

16 You said that information would not be  
17 trustworthy because the manufacturer had a financial  
18 interest.

19 Is that right?

09:44:18

20 A. I believe that I clarified myself and I said it  
21 certainly would be a possibility that if that information  
22 came from the drug manufacturer, that it's not entirely  
23 objective.

24 And by the way, that's not a unique  
09:44:33 25 perspective. That's well-known that information that

1 comes from drug manufacturers is going to be favorable to  
2 that drug.

3 Q. Do you agree that it's not unusual for  
4 manufacturers to provide information to the purchasers of  
09:44:55 5 their products about their products, is that right?

6 A. Yes.

7 Q. In fact, they're required to provide information  
8 about their product through the FDA, right?

9 A. Yes.

09:45:04 10 Q. And most of your clinical work -- I mean your  
11 actual practicing patients -- over the last 10 years has  
12 been treating patients who were abusing or addicted to  
13 opioids?

14 A. That is a big part of my clinical work.

09:45:26 15 We also see a lot of patients with chronic  
16 pain who are nonaddicted to opioids, but are physically  
17 dependent on opioids, and we help them taper slowly down  
18 and off of those opioids.

19 Q. Well, would you agree that the majority of the  
09:45:39 20 patients you treat have either a substance abuse disorder  
21 or a chemical dependency problem?

22 A. Yes.

23 Q. So when it comes to opioids, your patient  
24 population, your personal patient population is one that  
09:45:53 25 has had problems and harm from opioids, correct?

1 A. Yes.

2 Q. In other words, you aren't seeing patients who have  
3 benefited from opioids without problems, have you?

4 A. By and large, no.

09:46:03 5 Q. And because of that experience, because of that  
6 perspective you have, you consider yourself to be totally  
7 biased when it comes to opioids, don't you?

8 A. No, I don't.

9 Q. Do you recall when you were in the process of  
09:46:17 10 promoting your book, the one we've been talking about,  
11 that you gave an interview to National Public Radio?

12 A. Yes, I do.

13 Q. A lot of people know it as NPR?

14 A. Yes.

09:46:28 15 Q. The interviewer in that interview was -- I've  
16 forgotten her first name? Ms. Gross.

17 A. Terry Gross.

18 Q. Terry Gross. Thank you.

19 I'd like to play for you that interview and  
09:46:39 20 see if that, in fact, is what you said.

21 - - - - -

22 (Tape playing as follows:)

23 'Drug Dealer, M.D.': Misunderstandings And Good  
24 Intentions Fueled Opioid Epidemic

25 December 15, 2016 · 2:35 PM ET

1 TERRY GROSS, HOST:

2 GROSS: Since you're only seeing the  
3 patients who are addicted, and you're not the seeing  
4 patients for whom opioids or Adderall or Ritalin or, you  
5 know, Klonopin or whatever worked really effectively,  
6 do you think that you're biased because you're only  
7 seeing the people who have had problems and  
8 you're not seeing the people who have benefited without  
9 problem?

10 LEMBKE: I'm totally biased. GROSS: OK.

11 (LAUGHTER)

12 LEMBKE: I mean, there's no doubt about it.

13 GROSS: So how do we take that (laughter).

14 LEMBKE: Well, you know, what I'm trying to  
15 highlight here is that - not that these medications are  
16 bad in all circumstances. What I'm trying to highlight  
17 is that the risk is tremendous and that we have really  
18 not, heretofore, appreciated the extent of the risk and  
19 that most doctors are completely clueless about the  
20 addictive nature of medications that they're prescribing,  
21 and they don't tell their patients about the addictive  
22 potential so patients don't know.

23 And so I'm trying to raise awareness around the  
24 dangers inherent in overprescribing these medications  
25 which is not the same thing as saying they have no

1 utility or they should never be prescribed or no one  
2 anywhere on planet Earth should ever take opiates  
3 chronically. I don't believe that. I believe that there  
4 are patients out there who take opioids every day for  
5 some kind of chronic pain condition for whom it is  
6 incredibly helpful and life-changing. I believe it 100  
7 percent. But I think those patients are the minority.  
8 I think the majority of people on chronic opioid therapy  
9 will develop problems that make the drug riskier  
10 than it is helpful.

11 (End of tape playing.)

12 BY MR. MAJORAS:

13 Q. Dr. Lembke, I think we've now recognized your  
14 voice, but could you at least verify that was, in fact,  
09:48:44 15 you on that interview we just heard?

16 MR. WEINBERGER: We will stipulate, your  
17 Honor.

18 A. Yes, yes, that was me.

19 THE COURT: All right. It clearly was.

09:48:51 20 BY MR. MAJORAS:

21 Q. Yesterday -- I'm going to switch topics now.  
22 Yesterday --

23 MR. LANIER: Your Honor, at this point I'll  
24 object. If he's going to impeach her with a prior  
09:48:58 25 inconsistent statement like that, the Rules say he has to

1 give her a chance to explain why it's contrary to what  
2 she's saying today, and he's not giving her that chance.

3 MR. MAJORAS: Your Honor, I think that  
4 misstates what the rule is in court.

09:49:10 5 Counsel is going to have a chance to  
6 redirect.

7 THE COURT: All right. I think -- I think  
8 she's explained what she said.

9 BY MR. MAJORAS:

09:49:18 10 Q. Dr. Lembke, I'm going to switch topics here.

11 Yesterday in your testimony --

12 THE COURT: You want to ask on redirect for  
13 further explanation, you of course can.

14 MR. LANIER: Thank you, Judge.

09:49:28 15 I'll put it there.

16 BY MR. MAJORAS:

17 Q. Yesterday in your testimony, you worked with  
18 Mr. Lanier to make a list with two columns, one was what  
19 the pharmacists knew and one was what the doctor knew.

09:49:39 20 Do you recall that?

21 A. Yes.

22 Q. I just want to make sure we're clear in your  
23 overall testimony.

24 Is it your testimony to the jury that  
09:49:48 25 pharmacists are more informed about a patient's medical

1 situation than the doctors who examine, diagnose, and  
2 direct the medical course of treatment?

3 A. What I was trying to communicate is that  
4 pharmacists have access to more data than an individual  
09:50:04 5 physician working out of their office will have.

6 They have access to data on not just  
7 patients but also prescribers, other prescribers, which  
8 is something an individual doctor would not have.

9 And they, in checking the Prescription Drug  
09:50:24 10 Monitoring database, could potentially see things that a  
11 doctor who checked the same database the day before would  
12 not see.

13 Q. So you talked about that gap in time, for example,  
14 if someone might be doctor shopping.

09:50:35 15 Do you recall that?

16 A. Yes.

17 Q. So if someone comes to, let's say came to you as a  
18 doctor, you're the last doctor that person sees out of  
19 six, and you were to prescribe an opioid medication, when  
09:50:47 20 they have their six prescriptions now and they're ready  
21 to go get them filled, you wouldn't know what else is in  
22 their pocket.

23 Right?

24 A. What was the last --

09:50:56 25 Q. You wouldn't know what other prescriptions were



1 already in their pocket?

2 A. I wouldn't know what other -- that's right, if they  
3 hadn't yet gone to the pharmacy.

4 So the Prescription Drug Monitoring  
09:51:08 5 database, you only see it once it's been dispensed. You  
6 don't see it when the doctor prescribes it.

7 And, in fact, you only see it once it's  
8 been dispensed and the pharmacist has entered it into the  
9 system or whoever has been designated to do that.

09:51:22 10 So it doesn't show up on the Prescription  
11 Drug Monitoring database until it has been dispensed or  
12 until the pharmacist or other designee has entered it  
13 into the database.

14 Q. That helps my next question.

09:51:36 15 A. Great.

16 Q. So let's say that patient we talked about with the  
17 six prescriptions in their pocket goes first to Walmart,  
18 Walmart looks into the database, they wouldn't know about  
19 the other five, would they?

09:51:46 20 A. That's correct.

21 Q. And do you know how long it takes before -- well,  
22 let me back up.

23 The information that the pharmacy gets  
24 about a patient, that then gets sent to the state to put  
09:51:56 25 into their PDMP program, right?

1 A. Yes.

2 Q. So the PDMP program is what you're talking about  
3 which might help with doctor shopping?

4 A. Yes.

09:52:06 5 Q. And how long does it take before the PDMP program  
6 is aware that a prescription's been filled?

7 A. It varies state-to-state.

8 It depends on the robustness of that PDMP  
9 program. Some are very quick and efficient and it  
09:52:22 10 happens almost immediately. For others, there are  
11 delays.

12 Q. It sometimes can be as long as three days, correct?

13 A. That's correct.

14 Q. So if the -- that patient that we just talked  
09:52:32 15 about, that hypothetical patient, tried to fill all six  
16 of those prescriptions that day, it's certainly possible  
17 that they were all filled before the pharmacists have  
18 that information, right?

19 A. It is possible, yes.

09:52:43 20 Q. And let's now jump ahead.

21 Let's say that patient comes back to you a  
22 month later, and those six prescriptions are now in the  
23 PDMP base, correct, should be?

24 A. Yes.

09:52:55 25 Q. At that point, you can look at the base and find

1 out whether the doctor shopping has occurred, right?

2 A. Yes.

3 Q. You've got that same information the pharmacy would  
4 have when that person tries to fill a script?

09:53:05 5 A. Assuming that the pharmacy entered the data, yes.

6 Q. Well, let me turn to that question.

7 Are you familiar with something at Walmart  
8 called Connexus? And I'll spell it, C-O-N-N-E-X-U-S?

9 A. I am not recalling that, no.

09:53:22 10 Q. Are you familiar at all with the computer system  
11 that Walmart pharmacists use to enter data about  
12 prescriptions when they come in?

13 A. I'm not familiar with the specific computer system  
14 that Walmart uses, no.

09:53:48 15 Q. So in your work in this case, you didn't  
16 investigate the information that Walmart puts into their  
17 system.

18 Is that fair?

19 A. No, that's not fair.

09:53:56 20 Q. Do you know that the Connexus system has been  
21 around since prior to 2000?

22 A. As I just said, I'm not recalling that system.

23 Q. Okay. Let's again change topics.

24 You've never worked for the Food & Drug  
09:54:10 25 Administration, the FDA, have you?

1 A. No.

2 Q. You're not an expert in FDA regulations?

3 A. No.

4 Q. You also don't have expertise or experience with

09:54:21 5 FDA regulations governing pharmaceutical marketing, do  
6 you?

7 A. No.

8 Q. Do you have a degree or training in marketing?

9 A. No.

09:54:30 10 Q. You don't have any employment experience in  
11 marketing, do you?

12 A. No.

13 Q. And you certainly don't have employment experience  
14 working in the field of pharmaceutical marketing?

09:54:41 15 A. No.

16 Q. You don't belong to any professional associations  
17 in the field of pharmaceutical marketing, correct?

18 A. Correct.

19 Q. And you've never worked for the Drug Enforcement  
09:54:54 20 Administration?

21 A. Correct.

22 Q. Nor have you worked for a State Board of Pharmacy?

23 A. Correct.

24 Q. You -- again switching topics, you spoke yesterday  
09:55:07 25 about coupons.

1 Do you recall that testimony?

2 A. Yes.

3 Q. And a coupon might be something that a patient has  
4 that they can get a discount on medication.

09:55:18 5 Correct?

6 A. Yes.

7 Q. Without a prescription, though, without a  
8 prescription that needs to be filled, that coupon doesn't  
9 give the patient access to medication, does it?

09:55:28 10 A. No.

11 Q. In other words, a doctor first has to prescribe the  
12 medication before a coupon has any value?

13 A. Correct.

14 Q. And you, as a doctor, would agree that if a patient  
09:55:40 15 came to you and said, "Hey, I've got a nice coupon, can  
16 you prescribe that," that would not be a medical basis  
17 for prescribing medication?

18 A. Well, it probably would influence that doctor's  
19 prescribing.

09:55:51 20 Q. Would it influence you?

21 A. It might.

22 Q. So the -- I'll switch gears again.

23 You agree that chronic pain is a real  
24 medical condition?

09:56:08 25 A. Yes.

1 Q. You showed the jury yesterday a scale of sort of  
2 happy faces to frowny faces, if that's the right word,  
3 going from one to ten.

4 Do you recall that?

09:56:19 5 A. Yes.

6 Q. Would you agree there's no objective measure for  
7 pain?

8 A. Yes.

9 Q. In other words, if you tell me you're in pain,  
09:56:27 10 there's no way for me to know exactly what you mean by  
11 pain?

12 A. That's correct.

13 Q. And to assess a patient's, an individual patient's  
14 pain, a doctor has to look at the specific conditions and  
09:56:40 15 situation of that particular patient, right?

16 A. That's part of what would go into medical  
17 decision-making, yes.

18 Q. And you would agree that chronic pain, you talked  
19 about chronic pain yesterday, is very difficult to treat,  
09:56:53 20 isn't it?

21 A. Yes.

22 Q. And if you look today at patient outcomes, so if  
23 you look at patient outcomes today, pain is still  
24 undertreated, isn't it?

09:57:06 25 A. I would not use that terminology, undertreated.

1                   That's a loaded term that Purdue rolled out  
2                   that implied that undertreatment of pain was because  
3                   people weren't using enough opioids.

09:57:27 4           Q.     If you could pull up the binder again with your  
5           deposition transcript that we talked about earlier, and  
6           this again, is the May 28th, 2021 deposition that you  
7           gave.

8                   I'm going to ask you to turn to Page 30.

9           A.     Okay.

09:57:59 10          Q.     And particularly starting at Line 9, I would ask  
11          you to read along with me. I'll ask you whether I've  
12          read it correctly. Starting at Line 9, there's the  
13          question -- it's up on the screen in front of us all so  
14          if that helps you.

09:58:14 15                   "And pain, in fact, had been undertreated,  
16                   is that right?"

17                   And your answer: "Pain is still  
18                   undertreated if you look at outcomes, especially for  
19                   chronic pain."

09:58:25 20                   Did I read that correctly?

21          A.     Well, you didn't include what I said right after  
22          that which is --

23          Q.     Did I read that part correctly?

24          A.     That's what the words say.

09:58:33 25          Q.     I'm going to go to your next part.

1                   You then answered about seven lines down,  
2                   you said -- and is your answer: "The truth is we have  
3                   very poor treatments for chronic pain"?

4                   A.       Oops, you skipped a part.

09:58:48 5                   Q.       Okay. Let's go back.

6                   Let's put the whole thing in.

7                   So Line 13, the question: "Before the  
8                   paradigm shift, had pain been undertreated?"

9                   Your answer: "It really depends on how  
09:59:01 10                  you're defining undertreatment."

11                  Then the question, "How do you define  
12                  undertreatment as it existed prior to the paradigm  
13                  shift?"

14                  Your answer: "The truth is we have very  
09:59:11 15                  poor treatments for chronic pain, and in that sense,  
16                  chronic pain is undertreated because we don't have good  
17                  treatments but I do not agree with the premise that  
18                  opioids are underprescribed or were underprescribed prior  
19                  to the 1909s."

09:59:25 20                  Did I read that correctly?

21                  A.       Yes.

22                  Q.       And to this day, we still have limited ability to  
23                  treat patients -- I say we -- doctors still have limited  
24                  ability to treat patients with severe chronic pain, is  
09:59:38 25                  that correct?



1 A. That is correct.

2 Q. Would you agree that among other things, the FDA,  
3 Food & Drug Administration, is responsible for protecting  
4 the public health by ensuring the safety, effectiveness,  
09:59:51 5 and quality of prescription medicines?

6 A. Yes.

7 Q. And you understand that before approving any  
8 prescription medicine, the FDA must determine that it is  
9 safe and effective for its indicated use, correct?

10:00:02 10 A. Yes.

11 Q. I think we've all learned a lot about the FDA over  
12 the last two years.

13 And to do that, the FDA itself has medical  
14 doctors on its staff?

10:00:12 15 A. Yes.

16 Q. Scientists?

17 A. Yes.

18 Q. Other medical professionals?

19 A. Yes.

10:00:18 20 Q. And you understand that the FDA has approved  
21 prescription opioid medicines?

22 A. Yes.

23 Q. And in approving those opioid medicines, the FDA  
24 made the judgment that the benefits outweigh the risks,  
10:00:32 25 correct?

1 A. Yes. At that time.

2 They've qualified their labeling since  
3 then, but yes.

4 Q. You agree that opioids have benefits?

10:00:43 5 A. Yes.

6 Q. Even today, there are chronic pain patients who  
7 have a legitimate medical need for prescription opioids  
8 to treat their chronic pain?

9 A. Yes.

10:00:54 10 Q. Should opioids be banned?

11 A. Of course not.

12 Q. And in terms of issuing prescriptions or  
13 prescribing opioids, you would agree that there are many  
14 medical specialties that prescribe opioid medications?

10:01:12 15 A. Yes.

16 Q. I'll list a few and see if you agree.

17 Oncologists?

18 A. Yes.

19 Q. Those are doctors who are primarily treating or  
10:01:20 20 diagnosing cancer?

21 A. Yes.

22 Q. What about surgeons and surgery disciplines?

23 A. Yes.

24 Q. Orthopedic doctors?

10:01:30 25 A. Yes.

1 Q. Geriatric doctors?

2 A. Yes.

3 Q. Dentists?

4 A. Yes.

10:01:40 5 Q. And that's just a partial list.

6 There are other doctors as well, correct?

7 A. Of course.

8 Q. And you would agree that opioid medications are  
9 also used for hospice care?

10:01:51 10 A. Yes.

11 Q. And could you describe just what hospice care is?

12 A. Hospice care is for people who are terminally ill,  
13 at the end of life, and it's a way to primarily make them  
14 comfortable as they pass.

10:02:06 15 Q. And you would agree, and I mean this without any  
16 disrespect to anyone, you would agree that a hospice  
17 patient who is dealing with terminal conditions does not  
18 present the same addiction concerns that other  
19 nonterminal patients present?

10:02:21 20 A. Not necessarily.

21 So part of the phenomenon of getting  
22 addicted to opioids is, as I said before, how long you  
23 take them.

24 And the longer you take them and the higher  
10:02:34 25 the dose, the more you are at risk.

1 And I have certainly treated hospice  
2 patients who became addicted to their opioids that were  
3 prescribed at the end of life because they ended up  
4 living a lot longer than anybody thought.

10:02:49 5 So we have to be vigilant in that  
6 population as well since we have more and more patients  
7 who are living longer with severe illnesses and actually  
8 surviving those illnesses.

9 So the question of opioids, again, has less  
10:03:08 10 to do with the disease process that we're treating, and  
11 more to do with the dose and duration and whether or not  
12 that person begins to show signs and symptoms of the  
13 disease of addiction.

14 Q. The ultimate decision of whether to prescribe an  
10:03:26 15 opioid or not rests with the doctor, correct?

16 A. Decision-making in modern medicine belongs to many  
17 different entities.

18 A doctor certainly plays a role, but there  
19 are many other factors that go into those decisions.

10:03:43 20 Q. At the very beginning of your testimony, you said  
21 you had interactions with pharmacists, and that was in  
22 relationship primarily to your practice, correct?

23 A. Yes.

24 Q. And you would agree that that was primarily  
10:03:55 25 pharmacists calling you from time to time asking you

1 about a prescription they had from you.

2 Right?

3 A. I would say more than time-to-time.

4 It's a daily interaction with pharmacists  
10:04:04 5 around prescriptions.

6 Q. But you don't call pharmacists to ask what you  
7 prescribe, do you?

8 A. Sometimes I will reach out to a pharmacist about a  
9 particular prescription.

10:04:13 10 Q. How often do you reach out to pharmacists about a  
11 particular prescription before you prescribe it?

12 A. I would say it's a fairly regular occurrence based  
13 not so much on medical decision-making as much as how it  
14 will be paid for, which is one of the factors whether or  
10:04:43 15 not, you know, insurance covers it, what the patient's  
16 co-pay is.

17 Sometimes there's a certain way you can  
18 write for a medication that the insurance will cover for,  
19 but if you have, you know, if you're doing a  
10:04:59 20 three-times-a-day dosing, the insurance won't cover it,  
21 so then you have to change your dosing, which gets back  
22 to what I was saying before that doctors are not making  
23 their medical decisions in a vacuum. There are huge  
24 external influences on what and how we decide to proceed.

10:05:17 25 Q. In the case you just described, you made the

1 decision that an opioid treatment is appropriate, and as  
2 a courtesy to your patient, you're trying to do it in a  
3 way that meets your medical diagnosis but also makes it  
4 most affordable to the patient.

10:05:31 5 Is that right?

6 A. That can be one of the scenarios, but I might also  
7 call a pharmacy to ask, for example, if they have  
8 concerns about a patient who has been receiving a  
9 controlled drug and whether or not they've seen  
10:05:50 10 particular red flags or what the behavior is that they  
11 have seen.

12 We work together around this corresponding  
13 responsibility, and because we're seeing different parts  
14 of the elephant, it's very important that we communicate.

10:06:03 15 Q. So if you could put into the times you've called  
16 and looked for help from a pharmacist, versus a  
17 pharmacist asking about one of your prescriptions, what  
18 percentage falls in the category of ones where you  
19 reached out to the pharmacist first?

10:06:16 20 A. I really couldn't put a percentage on it, but I  
21 would say that it's mostly me -- it's mostly pharmacists  
22 reaching out to me initially, rather than me reaching out  
23 to them before I prescribe.

24 But once I've been prescribing I'm as  
10:06:32 25 likely to reach out to the pharmacist as they to me.

1 It's a very two-way interaction.

2 Q. Sorry. Didn't mean to interrupt.

3 Switching now to Lake and Trumbull

4 Counties, the counties in this case, do you agree that

10:06:44 5 the large majority of opioid prescriptions written in

6 Lake and Trumbull are written for what the doctor who

7 wrote them thought was a legitimate medical purpose?

8 A. I mean, as I've said before, I think on a national

9 level, which would include Lake and Trumbull Counties, in

10:07:04 10 the first decade-and-a-half of this century, most of the

11 doctors who were writing opioid prescriptions thought

12 they were writing for a legitimate medical purpose.

13 We really only have seen kind of an

14 awareness, a dawning awareness in the last five years or

10:07:22 15 so, where doctors have realized that they were

16 essentially duped and that there's not evidence to

17 support the use of opioids in chronic pain, and that even

18 using opioids short-term for minor pain conditions can be

19 a gateway to opioid addiction and other harms.

10:07:42 20 Q. You're unsure of whether you've actually been to

21 either Lake or Trumbull County, right?

22 A. I don't believe that I have.

23 Q. And in forming your opinions in this case, you did

24 not conduct any interviews of doctors or health

10:07:55 25 professionals in either of those counties, did you?

1 A. That is correct.

2 Q. You didn't interview any pharmacists in either of  
3 those counties, did you?

4 A. No.

10:08:05 5 Q. You didn't interview any employees of Lake or  
6 Trumbull County as part of your work in this case, did  
7 you?

8 A. That is correct.

9 Q. And you didn't interview any law enforcement  
10:08:15 10 officers working in those two counties?

11 A. Correct.

12 Q. Do you know how many total pharmacies there are in  
13 Lake County?

14 A. No.

10:08:29 15 Q. I assume the same answer for Trumbull County.

16 A. Correct.

17 Q. You didn't do any study of specific patient level  
18 data in these two counties, did you?

19 A. No.

10:08:50 20 Q. You didn't do any specific study of overdose death  
21 records from Lake or Trumbull County, did you?

22 A. Can you give me a moment to look at my report?

23 Q. Sure.

24 (Pause.)

10:09:23 25 A. On Page 3 of the specific appendix in my report, I



1 cite the following statistics.

2 The rate of prescription opioid overdose  
3 deaths in Lake County increased from 5.9 deaths per  
4 100,000 in 2008 to a peak of 11.31 per 100,000 in 2013.

10:09:51 5 For Trumbull County, the rate increased  
6 from 9.4 per 100,000 in 2008 to a peak of 10.6 per  
7 100,000 in 2017.

8 Q. That information you just cited, that wasn't a  
9 study that you did, was it?

10:10:19 10 A. No.

11 Q. So my question, just very specific to you, is you  
12 did not do any investigation beyond what you cited as to  
13 specific overdose or Opioid Use Disorders in Lake or  
14 Trumbull County, did you?

10:10:35 15 A. Not beyond what I cited in my report.

16 Q. And you can't identify any specific prescription  
17 that was filled by any of the defendant pharmacists in  
18 Lake or Trumbull County that was, in fact, diverted, can  
19 you?

10:10:55 20 A. Again, I did not look at the data at the county  
21 level specifically in Lake and Trumbull Counties.

22 I looked at it in aggregate.

23 Q. Aggregate the way you looked at the conduct of the  
24 Walmart leadership you talked about before?

10:11:12 25 A. Similar, yes.

1 MR. MAJORAS: Thank you, Your Honor.

2 I pass the witness.

3 Thank you, Dr. Lembke.

4 THE WITNESS: You're welcome.

10:11:32 5 THE COURT: Okay. I think next we'll have  
6 Mr. Stoffelmayr.

7 MR. STOFFELMAYR: Thank you, Judge.

8 THE COURT: For Walgreen's.

9 MR. STOFFELMAYR: Judge, may I proceed?

10:12:35 10 THE COURT: Yes.

11 CROSS-EXAMINATION OF ANNA LEMBKE

12 BY MR. STOFFELMAYR:

13 Q. Good morning, Dr. Lembke.

14 A. Good morning.

10:12:39 15 Q. My name is Kaspar Stoffelmayr and I represent  
16 Walgreen's, and we have met before but only on Zoom, so  
17 it is very nice to meet you in person finally.

18 A. Nice to meet you, too.

19 Q. My first question for you is do you know what  
10:12:56 20 Intercom Plus is?

21 A. No.

22 Q. So you couldn't tell us anything about how the  
23 Walgreen's Intercom Plus system works or what data it  
24 makes available to Walgreen's pharmacists?

10:13:10 25 A. I'm not recalling that name, Intercom Plus.

1 Q. All right. I want to ask you about some of the  
2 specific things you said yesterday about Walgreen's.

3 Does that sound strange to you, too, or is  
4 that just me, the speaker?

10:13:27 5 A. It sounds okay to me.

6 Q. Okay. Does it sound okay to everyone else? A  
7 little feedback or fuzzy over here.

8 Let me ask you, the University of  
9 Washington Medical School, that's a top medical school,  
10:13:43 10 isn't it?

11 A. Yes.

12 Q. And the Fred Hutchinson Cancer Research Center in  
13 Seattle, that's a famous, well-known institution?

14 A. I'm not familiar with it.

10:13:54 15 Q. You're not familiar with the Fred Hutchinson Center  
16 in Seattle?

17 A. No.

18 Q. It's your view, I think you've made this clear,  
19 that things that Purdue says and things that Purdue does  
10:14:11 20 should not be trusted, correct?

21 A. In general, yes.

22 Q. When did you come to that conclusion about Purdue?

23 A. Again, it was an iterative process in the first  
24 decade-and-a-half or so of this century.

10:14:26 25 Q. So, say, between 2000, 2015?

1 A. Yeah.

2 Q. Would you say that the level of conduct you've seen  
3 at Purdue is worse than the average pharmaceutical  
4 company?

10:14:44 5 A. Are you talking about manufacturers?

6 Q. Yes.

7 A. Uh-huh.

8 I would say that Purdue probably represents  
9 the most egregious examples.

10:14:55 10 Q. You talked about continuing education for  
11 pharmacists.

12 Doctors also do continuing medical  
13 education programs, correct?

14 A. Yes.

10:15:05 15 Q. And have you ever attended -- it's called CME,  
16 right?

17 A. Yes.

18 Q. Have you ever attended a CME program that was paid  
19 for by a manufacturer of a medicine?

10:15:21 20 A. I'm sure that I have, but often, they're invisible  
21 sponsors so you don't actually know.

22 Q. And at least in the 1990s, for example, it was very  
23 common for doctors to attend CME programs that were  
24 sponsored by a drug manufacturer, correct?

10:15:39 25 A. Yes.

1 Q. Is that less common today?

2 A. Actually I don't -- I don't know.

3 Q. And I think you're familiar with this, that  
4 pharmacists have to, under the Board of Pharmacy rules,  
10:15:56 5 have to do their own continuing education, but pharmacy  
6 education rather than doctor or medical education, right?

7 A. Yes.

8 Q. You talked with Mr. Lanier yesterday about a  
9 document from 1998 where Purdue was going to put on a CE  
10:16:18 10 program for some Walgreen's pharmacists, right?

11 A. Yes.

12 Q. And why don't we take a look at the document. I'm  
13 going to live dangerously and try to run my own computer.  
14 If this doesn't work, it will be the last time.

10:16:45 15 Can you see the document on your screen,  
16 Doctor?

17 A. Yes, I see the document.

18 Q. I'll make it a little bigger.

19 This is that document from, let's see,  
10:17:06 20 let's get control of the mouse, December of 1998,  
21 correct?

22 A. Yes.

23 Q. And it's a letter to Mr. Scott Diveney, who is a  
24 pharmacy supervisor and a pharmacist at Walgreen's in  
10:17:20 25 Bellevue, Washington, correct?

1 A. Yes.

2 Q. And the speaker, the presenter, was going to be  
3 Dr. Louis Saeger, correct?

4 A. Yes.

10:17:34 5 Q. Are you familiar with Dr. Saeger?

6 A. No.

7 Q. So you don't know anything about his Board  
8 certifications, where he did his fellowships, anything  
9 like that?

10:17:44 10 A. No.

11 Q. You said yesterday that any Purdue-sponsored  
12 program would be, I think the words you used were full of  
13 misinformation, correct?

14 A. Typically, yes.

10:18:01 15 Q. You've never actually seen Dr. Saeger's  
16 presentation, have you?

17 A. I believe I tried hard to find it and could not  
18 find it.

19 Q. So you had not seen Dr. Saeger's presentation?

10:18:14 20 A. No. I would love to see it if you have a copy.

21 Q. I do not. I've looked for it as well.

22 But you were comfortable telling the jury  
23 that Dr. Saeger's presentation was full of  
24 misinformation, even though you haven't seen the  
10:18:31 25 presentation and don't know anything about Dr. Saeger.

1 That was your testimony yesterday?

2 A. I've reviewed so many continuing medical education  
3 courses sponsored by Purdue and Purdue collaborators from  
4 this time period, and they're extremely consistent in  
10:18:47 5 their messaging.

6 So although I didn't see this because I  
7 couldn't find it, yes, I am comfortable saying that it  
8 was likely full of the same misleading messages.

9 Q. Did you do any -- any research to learn about  
10:19:00 10 Dr. Saeger, who he is today and who he was then?

11 A. I tried very hard to find this continuing medical  
12 education course and was not able to.

13 Q. No, my question was Dr. Saeger.

14 Did you do anything to find out about  
10:19:13 15 Dr. Saeger? Did you Google him like I did last night?

16 A. No.

17 Q. Let me ask you about a different topic.

18 You said yesterday that Walgreen's  
19 collaborated with Purdue to create Super Store  
10:19:41 20 pharmacies, and these pharmacies essentially became the,  
21 I think you said this, the pill-mill equivalent of a  
22 pharmacy.

23 Do you remember that testimony?

24 A. Yes.

10:19:51 25 Q. The truth, Doctor, is you don't know if any of

1 these Super Stores exist, ever existed?

2 A. There are DEA investigations of Walgreen's.

3 Walgreen's has not just acted as a  
4 pharmacy, but also as a distributor. And there are  
10:20:27 5 Department of Justice DEA complaints against Walgreen's  
6 for not just selling, but also distributing large amounts  
7 of Oxycodone in Florida and California.

8 And those DEA complaints were based on  
9 large surges in sales of OxyContin or Oxycodone from  
10:20:53 10 those stores.

11 So that's what I'm referring to, and there  
12 is evidence from those DEA investigations showing that  
13 these pharmacies essentially functioned as pill-mill  
14 pharmacies and that Walgreen's had the data to know that  
10:21:11 15 this was happening and should have been aware and should  
16 have prevented it.

17 Q. In your report when you talk about Super Stores,  
18 let's put it this way, there's a specific section of your  
19 report that talks about Super Stores, correct?

10:21:25 20 A. Yes.

21 Q. And I think there was an opportunity yesterday, you  
22 commented on how careful you are with your footnotes,  
23 right?

24 A. Yes. Try to be.

10:21:38 25 Q. I want to go back to the page of your report that



1 Mr. Lanier asked you about here.

2 This is the -- this is the page of your  
3 report that you were talking about with  
4 Mr. Lanier -- oops, it's not very good -- when you were  
10:22:13 5 talking about Super Stores.

6 Correct?

7 I'm sorry. It's Page 97. I should have  
8 told you. Not 97, 83, I should have told you that.

9 A. So there are multiple places in the report where I  
10:22:54 10 talk about this general topic.

11 Q. Well, let me ask you this. This is what you  
12 were -- these are the two paragraphs you were discussing  
13 with Mr. Lanier when you talked about Super Stores.

14 That's correct, right?

10:23:04 15 A. That is correct, but there are other references in  
16 my report regarding the phenomenon of Super Stores  
17 overstocking, surges.

18 Q. Are you telling us there are other places in your  
19 report other than this section that use the words "Super  
10:23:24 20 Stores"?

21 I didn't see that.

22 A. I don't always use the language of Super Stores. I  
23 used that here because I believe that's what -- I believe  
24 that's what Brody used, but there are other sections of  
10:23:35 25 my report, for example when I talk about --

1 Q. Doctor, you've gone past my question now.

2 My question was these are the paragraphs,  
3 these are the paragraphs that discuss the concept of  
4 Super Stores and use that language, correct?

10:23:51 5 A. These are the paragraphs that discussed this  
6 problem using that language.

7 Q. And there are footnotes?

8 A. And there are other places in my report where I  
9 discuss this problem.

10:23:58 10 Q. I heard you the first time. Thank you.

11 A. Okay.

12 Q. There are footnotes, footnotes for these  
13 paragraphs, that include your citations, correct?

14 A. Yes.

10:24:07 15 Q. And the citations are to documents that come out of  
16 the files of Purdue, correct; not out of the files of  
17 Walgreen's?

18 A. Yes.

19 Q. And the words "Super Store" no, Mr. Brody, we'll  
10:24:25 20 get to Mr. Brody in a second, but this gentleman

21 Mr. Brody, no one else from Walgreen's, no one period  
22 from Walgreen's, only people from Purdue ever used the  
23 word "Super Store" in the documents you referred to?

24 A. I don't know.

10:24:36 25 Q. Mr. Brody was a -- you talked about him or you just

1 mentioned him -- he was a pharmacist at Walgreen's,  
2 correct?

3 A. Yes.

10:24:57

4 Q. And he -- we're talking about some e-mails from  
5 1997, correct?

6 A. Yes.

10:25:17

7 Q. And back in 1997, Mr. Brody got the idea that there  
8 should be 24-hour stores that stocked a wide variety of  
9 pain medications and had experienced pain pharmacists and  
10 things of that nature, correct?

11 A. Yes.

12 Q. And Mr. Brody was in Florida, correct?

13 A. Yes.

10:25:32

14 Q. He was a staff pharmacist; not a Walgreen's  
15 executive of any kind, correct?

16 A. Correct.

17 I believe that's correct.

10:25:45

18 Q. And as far as you know, these Super Stores that  
19 Mr. Brody had in mind, none of them ever opened up,  
20 correct?

21 A. Again, I can infer that there were such stores  
22 throughout the country.

10:26:06

23 If you look at my report, on Page 84, I  
24 quote, "Walgreen's distributes 374 million or 16.8  
25 percent of Purdue's prescription products. Walgreen's is

1 the largest of the greater than 200 retail chains that  
2 dispense Purdue prescription products."

3 And then I include a chart with average  
4 monthly sales showing that between 2010 and 2017, annual  
10:26:27 5 sales were on the order of greater than three hundred  
6 million per year.

7 Q. Let me ask you a question. What was the percent  
8 you just said? Can you read that again?

9 A. 16.8 percent.

10:26:38 10 Q. Walgreen's, Walgreen's accounted for 16.8 percent  
11 of --

12 A. Of Purdue's prescription products.

13 Q. In that same time period, what was Walgreen's  
14 percent market share for antibiotics? Was it greater or  
10:26:53 15 less than 16 percent?

16 A. I don't know.

17 Q. In that time period, do you know what Walgreen's  
18 market share for prescription drugs total was? Was it  
19 greater or less than 16 percent?

10:27:03 20 A. I don't know.

21 Q. In that time period was Walgreen's the largest  
22 pharmaceutical chain in the United States?

23 A. I don't know.

24 Q. If Walgreen's was the largest pharmaceutical chain  
10:27:13 25 in the United States, it wouldn't be too surprising that

1 they were dispensing more Purdue products than other  
2 people were, would it?

3 That wouldn't shock you?

4 A. That would not shock me.

10:27:24 5 Q. Let's go back to the question we started with.

6 Can you pull out your deposition transcript  
7 again?

8 A. Okay.

9 Q. Let me -- let me ask you the question more clearly.

10:27:50 10 How many Super Stores did Mr. Brody open  
11 up?

12 A. I don't know.

13 Q. You don't know if any Super Stores were actually  
14 opened up, correct?

10:27:59 15 A. Again, there is good evidence that Walgreen's was  
16 selling and distributing very large amounts of Oxycodone  
17 in Florida and California and other places across the  
18 United States, to the extent that there was a Department  
19 of Justice and DEA investigation, and they were cited not  
10:28:30 20 just for ignoring red flags, but also for ignoring huge  
21 surges in the numbers of opioids distributed and  
22 dispensed at certain pharmacies.

23 Q. Why don't you look at Page 204 of your deposition  
24 transcript.

10:28:56 25 And at your deposition, at your deposition

1 I asked you the question: "How many of these Super  
2 Stores did Mr. Brody open up?" The same question I asked  
3 you a minute ago.

4 And at your deposition your answer was: "I  
10:29:19 5 don't know if any Super Stores were actually opened up.  
6 But it's more the point here that this was a strategy  
7 that was being considered by Walgreen's."

8 Was that your testimony under oath at your  
9 deposition?

10:29:31 10 A. Yes.

11 THE COURT: Well, Mr. Stoffelmayr, if  
12 you're moving to a different area, it might be a good  
13 time for a break, but if you're still in that same line  
14 of questioning, I want you to finish.

10:29:54 15 MR. STOFFELMAYR: No, I'm moving to a  
16 different topic.

17 Thank you, Judge.

18 THE COURT: All right. Ladies and  
19 gentlemen, we'll take our midmorning break.

10:30:01 20 Usual admonitions. We'll see you in 15  
21 minutes.

22 Thank you.

23 (Jury out.)

24 THE COURT: If everyone could just be  
10:30:36 25 seated for a minute.

1 This morning, Mr. Pitts received a number  
2 of written questions from the jury.

3 I normally ask them to ask if any jurors  
4 have questions after the cross-examination, but this  
10:30:50 5 witness has been on for a long time so some of these  
6 questions pertain -- oh, Doctor, you can be excused for  
7 the break -- some relate to Dr. Lembke, some are in  
8 general.

9 I'll just read them. People can look at  
10:31:06 10 them.

11 "Were pharmacies, CVS, Walgreen's, Giant  
12 Eagle, Walmart, given the OUD data, dose and duration?  
13 Were they given the higher dose, higher risk?"

14 Second question: "Do drug companies still  
10:31:27 15 go to doctor offices and hospitals and pay for lunch and  
16 give tokens to sell their drugs?"

17 This one does relate to Dr. Lembke, "The  
18 documents she used to create her report, where do these  
19 documents come from? Provided by defense? Provided by  
10:31:53 20 plaintiff? Or her own research?"

21 And the last one, "Will the report from  
22 Dr. Lembke be available for the jury to review?"

23 Then that juror also wrote, "Please advise  
24 defense counsel to identify themselves."

10:32:06 25 That I covered.





1 these altogether.

2 MR. WEINBERGER: I understand.

3 But in terms of lawyers dealing with them,  
4 I think at the end of the cross and not taking into  
10:49:52 5 account those questions is really the fair way of  
6 handling them.

7 THE COURT: That's what I'm going to do in  
8 the future, but they handed them up at this time so we  
9 will proceed.

10:50:06 10 MR. WEINBERGER: The other thing, with  
11 respect to your instruction about the report not being in  
12 evidence, we would prefer that that instruction be given  
13 later at the close of her testimony so that there's no  
14 inference about something that occurred during cross.

10:50:21 15 THE COURT: All right. I'll -- when she's  
16 done, I'll give a general instruction about expert  
17 reports because it will apply to all experts in the case.

18 MS. SULLIVAN: Your Honor --

19 MR. WEINBERGER: Thank you, Judge.

10:50:34 20 And one other thing, if I may.

21 MR. DELINSKY: I don't want to knock you  
22 off, but can I speak to the instruction issue  
23 specifically?

24 THE COURT: All right. What --

10:50:45 25 MR. DELINSKY: Your Honor, Rule 703

1 requires the Court give a limiting instruction when  
2 potentially inadmissible evidence is shown to the jury as  
3 a basis of the expert's opinion, advising the jury that  
4 they can rely on it for some --

10:50:59 5 THE COURT: I'm not -- there's no question  
6 on that, Mr. Delinsky.

7 There's nothing potentially inadmissible.  
8 There was a reference to -- the question is the report.  
9 I'll deal with it.

10:51:08 10 MR. DELINSKY: Your Honor, there is  
11 something potentially inadmissible. For instance, we  
12 talked about yesterday she testified about a Purdue memo,  
13 talking about --

14 THE COURT: I didn't say it's inadmissible.

10:51:18 15 MR. DELINSKY: But it might be, Your Honor,  
16 and Rule 703 said there needs to be, it's a must, the  
17 commentary says there must be a limiting instruction that  
18 when evidence that has not been admitted in court yet has  
19 been shown to the jury to tease out the witness's  
10:51:35 20 opinions, that there must be a limiting instruction  
21 saying that they can't use that for substantive purposes.

22 That may change if these documents  
23 ultimately come in, but that's the state of play as we  
24 sit here today.

10:51:47 25 MR. LANIER: So if that's the case, Your

1 Honor, then --

2 THE COURT: I'm moving on.

3 I'm not giving any such instruction. If  
4 you want to file something, file it in general. At this  
10:51:55 5 point, I have no idea what's inadmissible.

6 MR. WEINBERGER: Your Honor, and one other  
7 thing on the issue of impeachment by prior deposition  
8 transcripts. My understanding of the Rule, and I could  
9 be wrong, but my understanding of the rule is that the  
10:52:07 10 deposition -- the prior deposition testimony must be  
11 shown to the witness and the witness asked whether or not  
12 that is their testimony before it is published on the  
13 screen.

14 So publishing -- because if it is not  
10:52:25 15 inconsistent, publishing it on the screen before that is  
16 established for purposes of impeachment is improper  
17 impeachment.

18 MR. MAJORAS: I completely disagree with  
19 that, Your Honor.

10:52:37 20 THE COURT: Well, you can impeach -- you  
21 can go right at it if it's impeachment but it's got to be  
22 inconsistent, and there have been a couple that have been  
23 real borderline, all right?

24 So counsel is warned on this, I'm not going  
10:52:52 25 to let you impeach unless it's really directly

1 contradictory.

2 And there are -- some have been right on  
3 the border.

4 All right. Let's move on.

10:53:07 5 MS. SULLIVAN: Your Honor, one quick  
6 question on our *Daubert* challenges in terms of moving to  
7 strike a witness's testimony when they're done.

8 THE COURT: I'm not going to strike the  
9 testimony.

10:53:18 10 MS. SULLIVAN: But just for preservation,  
11 Your Honor, can we -- will the Court agree that our  
12 *Daubert* challenges are preserved?

13 THE COURT: The *Daubert* challenges are  
14 preserved. I mean I've made my ruling so they are  
10:53:29 15 preserved.

16 Okay. Let's bring in the jury, please.

17 (Jury in.)

18 THE COURT: Okay. Please be seated.

19 And, Doctor, I want to remind you you are  
10:55:46 20 still under oath.

21 So, Mr. Stoffelmayr, you may continue.

22 MR. STOFFELMAYR: Thank you, Your Honor.

23 BY MR. STOFFELMAYR:

24 Q. Doctor, I just want to ask you about two more  
10:55:54 25 things real quickly.

1                   Yesterday you testified, do you recall  
2                   this, that there was an agreement between Walgreen's and  
3                   Purdue where I think you said that Walgreen's agreed that  
4                   if there was a theft or a robbery of OxyContin, that  
10:56:17 5                   Walgreen's would not increase safeguards or do any kind  
6                   of mitigation to deal with the risk of theft?

7                   A.       I don't believe that was my testimony.

8                   Q.       All right. Let's take a look.

9                   Her testimony from yesterday?

10:56:51 10                   A MALE SPEAKER: I do. Give me a second.

11                   MR. WEINBERGER: Your Honor, I object to  
12                   publishing this until --

13                   THE COURT: I agree.

14                   MR. STOFFELMAYR: No problem.

10:57:03 15                   THE COURT: Let's see it. Let's see it and  
16                   I'll determine if it's improper impeachment. So give it  
17                   to me.

18                   MR. STOFFELMAYR: Your Honor, I don't  
19                   believe there's a way to put it on her screen without  
10:57:26 20                   publishing it so we're going to give her a hard copy  
21                   transcript, if that's all right.

22                   A.       Thank you.

23                   Q.       Doctor, let me ask you to turn to Page 596 of your  
24                   testimony from yesterday.

10:58:07 25                   Do you have 596, Doctor?

1 A. Yes, I do.

2 Q. And this is -- this is the transcript we got last  
3 night from Sue. She is very quick. Thank you. And I'm  
4 looking at your testimony that begins at the bottom of  
10:58:22 5 Page 596, Line 23.

6 Do you see that?

7 A. Yes.

8 Q. And what you said was -- Mr. Lanier asked you about  
9 a section in your report, and your testimony was:

10:58:39 10 "Another part of this agreement between Walgreen's and  
11 Purdue was that Purdue agreed that if a given pharmacy  
12 experienced a loss of OxyContin due to theft or robbery,  
13 that they would replace opioid stock without increasing  
14 safeguards to mitigate any kind of diversion, which is  
10:58:59 15 extremely concerning."

16 You go on to explain.

17 Correct?

18 A. That's what it says.

19 I think that I would like to clarify what I  
10:59:08 20 meant by that.

21 Q. Please. Thank you.

22 A. Okay. Great.

23 So as in my report, Purdue agreed that if  
24 there was loss of OxyContin due to theft or robbery, that  
10:59:25 25 they would replace the opioid stock.

1 And that agreement, in the larger context  
2 of Walgreen's being under DEA investigation for  
3 dispensing opioids without paying attention to red flags  
4 and without putting necessary safeguards in place to  
10:59:55 5 prevent misuse and diversion, is extremely troubling.

6 So again, it's not one isolated data point.  
7 It's the data point in the broader context of the fact  
8 that over time, during which Walgreen's was actively  
9 pursuing mutual business interests with Purdue, they were  
11:00:17 10 also being investigated by the DEA, and they were not  
11 taking the necessary action to prevent the opioid  
12 oversupply.

13 Q. Okay. Doctor, the details here are really  
14 important because the claim you made yesterday is -- it's  
11:00:34 15 horrifying, the idea that Walgreen's agreed not to  
16 investigate theft and diversion, agreed not to take  
17 action after robbery.

18 So I want to make sure we've got the  
19 details really straight here.

11:00:46 20 MR. WEINBERGER: Objection to the argument  
21 of counsel.

22 THE COURT: Sustained.

23 If you want to ask a question,  
24 Mr. Stoffelmayr, you should do so.

11:00:52 25

1 BY MR. STOFFELMAYR:

2 Q. The agreement -- the e-mail you cite for that part  
3 of your report comes from 2008, correct?

4 A. I believe so.

11:01:01 5 I'd really have to find it in my report.

6 Would you like me to take a moment to find that?

7 Q. You can do that, if you need to.

8 A. Do you know what page it is?

9 Q. I do. Page 85.

11:01:25 10 A. Yes.

11 So on Page 85 of my report I, say: "In  
12 2008, Walgreen's had an agreement with Purdue, wherein  
13 Purdue agreed to replace OxyContin losses at a pharmacy  
14 due to theft or robbery. Theft and robbery from  
11:01:42 15 pharmacies are a form of diversion. Replacing opioid  
16 pharmacy stock without increasing safeguards to mitigate  
17 diversion does little to help the public good."

18 Q. And you, in fact, have no idea what Walgreen's does  
19 to put increased safeguards after a robbery at one of its  
11:02:04 20 pharmacies, do you?

21 You don't have any information about that?

22 A. Well, I have written in my report, I do have an  
23 opinion about safeguards broadly at Walgreen's pharmacy  
24 chain drug stores to prevent misuse and diversion.

11:02:19 25 Q. Asking about robberies, ma'am.



1 A. Yeah, I don't believe I have anything specifically  
2 about robberies.

3 Q. You understand that Walgreen's has a loss  
4 prevention function?

11:02:29 5 A. Again, I don't believe that's in my report.  
6 I don't believe I reviewed that.

7 Q. Do you know anything about what loss prevention  
8 does, what actions they take immediately following a  
9 robbery of a Walgreen's store, a robbery of controlled  
11:02:42 10 substances?

11 A. No.

12 Q. Do you know anything about Walgreen's security  
13 operation center and the role they play?

14 A. No.

11:02:49 15 Q. Do you know anything about the instructions that  
16 are given to store managers and pharmacy managers and  
17 pharmacists about the steps they must take in the event  
18 of a robbery?

19 A. No.

11:03:00 20 Q. All right. Last thing I want to ask you about is  
21 another topic, in developing your opinions for this case,  
22 you obviously looked at a lot of Purdue documents.

23 That's clear.

24 A. I looked at a lot of documents, including Purdue  
11:03:20 25 documents.

1 Q. And you've discussed some of those documents  
2 yesterday with Mr. Lanier and today on cross-examination.

3 Correct?

4 A. Yes.

11:03:29 5 Q. And one of the things you've talked about is that  
6 your view that Walgreen's gave Purdue too much access to  
7 its pharmacists, correct?

8 A. Yes.

9 Q. But you also know from your review of the documents  
11:03:47 10 that there were people at Purdue who were unhappy because  
11 Purdue would not let -- excuse me, let me ask that  
12 correctly.

13 You know from your review of the documents  
14 that there were people at Purdue who were unhappy because  
11:03:59 15 Walgreen's would not give Purdue the access to  
16 pharmacists that Purdue wanted?

17 A. I'm vaguely recalling some e-mail exchanges that  
18 might have had those kinds of sentiments.

19 I'm not recalling any specifics.

11:04:14 20 Q. Yeah, there are documents, in fact documents you  
21 got from -- documents you looked at where people at  
22 Purdue were unhappy about their inability to get access  
23 to Walgreen's pharmacists, that was a problem for them?

24 A. Okay.

11:04:27 25 Q. In their minds, correct?

1 A. Again, I'm not specifically recalling that.

2 I would be happy to look at the particular  
3 part of the document you're referencing.

4 Q. You've also seen documents where people at Purdue  
11:04:42 5 were complaining because Walgreen's policies were so  
6 restrictive about the dispensing of opioid medications?

7 A. What year was this?

8 Q. Any time period at all. Do you ever recall seeing  
9 a document from any time period where people at Purdue  
11:04:59 10 were complaining, where they were upset because

11 Walgreen's dispensing policies were so restrictive?

12 A. I'm not recalling anything like that.

13 Many of the documents that I reviewed noted  
14 that Walgreen's was not restrictive enough and did not  
11:05:17 15 have systems in place to prevent misuse and diversion as  
16 part of their corresponding responsibility.

17 Q. So did you see Purdue documents where people at  
18 Purdue were unhappy that they felt Walgreen's policies  
19 were too restrictive about dispensing opioid medications?

11:05:34 20 A. I may have done.

21 I'm not recalling that right now.

22 Q. Let me ask you to get out your deposition again.  
23 And go to Page 208.

24 A. Deposition.

11:06:08 25 Q. And let me ask you to look at the question and

1 answer that begins on Line 17 of Page 208.

2 Do you see that?

3 A. Can you give me a moment?

4 Q. Sure. Of course.

11:06:21 5 (Pause.)

6 A. Yes, I do see that.

7 Q. Okay. And at your deposition in May, I think, I  
8 asked you the question: "Did you see documents where  
9 people at Purdue were unhappy that Walgreen's pharmacists  
11:07:01 10 were refusing to fill prescriptions for OxyContin?"

11 And your answer at your deposition under  
12 oath was: "I have seen documents where Purdue expressed  
13 dismay about certain pharmacies that were, in their  
14 words, overly concerned with DEA regulations. I'm not  
11:07:19 15 now recalling which pharmacies those were or where they  
16 were located, but I have seen those types of documents."

17 Was that your testimony at your deposition?

18 MR. WEINBERGER: Objection, Your Honor.

19 THE COURT: Sustained. Objection is  
11:07:29 20 sustained.

21 The jury is to disregard that.

22 That's not inconsistent.

23 A. But this is a great opportunity --

24 THE COURT: Hold it.

11:07:36 25 THE WITNESS: Sorry.

1 THE COURT: Doctor, the objection is  
2 sustained.

3 You can disregard the question.

4 You can pose another question, but

11:07:45 5 that's -- that's not inconsistent.

6 BY MR. STOFFELMAYR:

7 Q. So is it your -- is it your testimony today that

8 you do not recall seeing the documents where folks at

9 Purdue were upset that Walgreen's dispensing policies

11:08:01 10 were too restrictive?

11 A. I have reviewed thousands of documents.

12 Since I testified in that deposition that I

13 recalled seeing those documents, on that day I recalled

14 seeing those documents.

11:08:14 15 Today I don't specifically remember those

16 documents, but as I said, I may well have done.

17 Q. Let me ask you one, one final question, Dr. Lembke.

18 And I want to talk about your expertise in

19 addiction medicine, all right?

11:08:29 20 A. Okay.

21 Q. If we look at the population of heroin users today,

22 do we have any way of knowing how many of them were

23 abusing heroin or any other opioid 10 years ago or 15

24 years ago?

11:08:48 25 A. No. There are data showing that about 80 percent

1 of heroin users today started out with a prescription  
2 opioid, which is very different from heroin users in the  
3 1970s, for example, where heroin users in the 1970s, the  
4 majority of them reported starting out with heroin.

11:09:13 5 So in terms of quantifying that number, I  
6 would think there are data on that. The National Survey  
7 of Drug Use and Health does reference heroin users.

8 And again, there are multiple studies  
9 looking at the progression from prescription opioids to  
11:09:40 10 heroin, which is the most common historical trajectory  
11 for heroin users today.

12 Q. Doctor, I appreciate that.

13 I was trying, maybe inartfully, to ask a  
14 slightly different question.

11:09:52 15 A. Okay.

16 Q. My question isn't how many current heroin users  
17 used prescription drugs or cocaine or methamphetamine or  
18 any other drug in the past.

19 My question is this: Of people who are  
11:10:06 20 using heroin today, as we sit here today, how many of  
21 them were already using heroin or another opioid 10 years  
22 ago?

23 Do we know the answer to that question?

24 A. I don't know it off the top of my head.

11:10:20 25 MR. STOFFELMAYR: All right. Thank you.

1 Your Honor, I pass the witness.

2 THE COURT: Okay.

3 MS. SULLIVAN: Your Honor, may I question?

4 THE COURT: Yes, Ms. Sullivan.

11:10:27 5 MS. SULLIVAN: Thank you.

6 CROSS-EXAMINATION OF ANNA LEMBKE

7 BY MS. SULLIVAN:

8 Q. All right.

9 MR. WEINBERGER: Ms. Sullivan, I notice  
11:11:14 10 that you gave -- your colleague gave a box of documents  
11 to the witness.

12 Do you have a box for us?

13 MS. SULLIVAN: We do, Mr. Weinberger.

14 Do you want to -- do you want to do -- he  
11:11:27 15 wants the box. Just give him the box.

16 MR. LANIER: One at a time is fine.

17 MS. SULLIVAN: Okay. Thank you.

18 MR. LANIER: That's fine. It doesn't  
19 matter. I just need to make sure I have them before you  
11:11:36 20 use them.

21 MS. SULLIVAN: No worries.

22 BY MS. SULLIVAN:

23 Q. Good morning, Dr. Lembke.

24 A. Good morning.

11:11:40 25 Q. We haven't met yet. I'm Diane Sullivan and I'm

1 here for the folks at Giant Eagle.

2 A. Nice to meet you.

3 Q. Nice to meet you, too.

4 Can you hear me?

11:11:50 5 A. I can.

6 Q. Good morning, jurors, and I want to introduce Lamia  
7 Sampson. She's a trial paralegal who has been working  
8 with me for a long time. She'd probably say too long.  
9 She's here to help get the exhibits organized today.

11:12:04 10 Dr. Lembke, Giant Eagle is different in  
11 many ways from some of these other defendants, and I want  
12 to start out with they are not a national pharmacy chain,  
13 correct?

14 A. Correct.

11:12:17 15 Q. They don't have thousands of stores across America?

16 A. That is my understanding, yes.

17 Q. And they are -- they don't have an Internet or  
18 website pharmacy business?

19 A. Not as far as I know.

11:12:32 20 Q. And, Dr. Lembke, you understand that their  
21 pharmacies are inside grocery stores in Lake and Trumbull  
22 County?

23 A. I didn't know that.

24 Q. Okay. You didn't know that?

11:12:46 25 A. No.



1 Q. Okay. Do you know that -- do you know the hours  
2 that -- were you provided information about the hours  
3 that Giant Eagle stores stay open?

4 A. No.

11:12:59 5 Q. Okay. And I understand for this case, in addition  
6 to your general review the plaintiffs' lawyers provided  
7 to you documents to take a look at?

8 A. Yes.

9 Q. And as I understand it, you looked at some  
11:13:16 10 documents that Giant Eagle produced in this litigation?

11 A. Yes.

12 Q. And you relied on, for the Giant Eagle documents,  
13 fair to say you relied on those that were selected out by  
14 the plaintiffs' lawyers?

11:13:29 15 A. I relied on those that were made available to me.

16 I asked for others, and I understand that  
17 they were not obtainable so I relied on what I had access  
18 to.

19 Q. And what they selected out for you?

11:13:42 20 A. Okay.

21 Q. And you know, Dr. Lembke, Giant Eagle doesn't have  
22 any stand-alone pharmacies in Lake or Trumbull County?

23 A. Again, I didn't know that they were in grocery  
24 stores.

11:13:59 25 Q. Okay. And do you know that their pharmacies close

1 at 9:00 p.m., like their grocery stores?

2 A. No.

3 Q. Okay. And as I understand it, or maybe this is  
4 wrong, but you've never been to a Giant Eagle store?

11:14:14 5 A. Correct.

6 Q. And you live in California?

7 A. Yes.

8 Q. Okay. And you know that, or I think you know  
9 because I think I saw it in your report, that Giant Eagle  
10 only operates in five states?

11:14:24

11 A. I believe so.

12 Q. Okay. Are you aware, Dr. Lembke, that Giant Eagle  
13 only operates in West Virginia, Indiana, Maryland,  
14 Pennsylvania and Ohio?

11:14:42 15 A. I don't remember the specific states, but I believe  
16 you.

17 Q. Okay. And no reason to dispute that?

18 A. What's that?

19 Q. No reason to dispute that?

11:14:54 20 You haven't seen any evidence to the  
21 contrary?

22 A. No.

23 Q. Okay. And do you know, Dr. Lembke, that most of  
24 Giant Eagle stores are in Northeastern Ohio and in  
11:15:07 25 western Pennsylvania?

1 A. Again, I don't know the geography exactly.

2 Q. And I think I heard you say that you've never been  
3 to Lake or Trumbull County?

4 A. Correct.

11:15:17 5 Q. And you have not interviewed any Giant Eagle  
6 pharmacist?

7 A. Correct.

8 Q. And in connection with your opinions in this case,  
9 you haven't spoken to any patients who've gotten  
11:15:31 10 prescriptions at Giant Eagle stores?

11 A. That's correct.

12 I've focused on Giant Eagle's drug  
13 utilization review policies and their systems for  
14 detecting red flags.

11:15:40 15 Q. And, Dr. Lembke, you have not interviewed any  
16 doctors in Lake or Trumbull County who have prescribed  
17 medicine that Giant Eagle dispensed?

18 A. Correct.

19 Q. And in terms of some of your general opinions,  
11:16:01 20 Dr. Lembke, I think you talked about stores in Florida  
21 and your opinion that it was too easy to get opioids  
22 dispensed in those stores and they made their way up  
23 through the rest of the country, including in Ohio.

24 Do you remember that testimony?

11:16:16 25 A. Yes.

1 Q. Dr. Lembke, that opinion would not apply to Giant  
2 Eagle; they don't have stores in Florida, right?

3 A. Yes.

4 Q. Yes, that would not apply to Giant Eagle?

11:16:29 5 A. That's correct.

6 Q. Okay. And, Dr. Lembke, some other opinions.

7 Mr. -- when Mr. Lanier was asking you  
8 questions, do you remember the PowerPoint where you went  
9 through your general, I think it was 13 or maybe 14  
10 general opinions?

11 A. Yes.

12 Q. And fair to say a lot of folks can have opinions,  
13 but to actually to support them, you need facts to back  
14 them up?

11:17:01 15 That's fair?

16 A. Yes, and I think I do have facts to back up my  
17 opinions.

18 Q. And, Dr. Lembke, after you gave your general  
19 opinions, as I remember it, Mr. Lanier said, "And that  
11:17:13 20 applies to Giant Eagle, too," and I think you said yes to  
21 a couple of those, right?

22 A. I'm not recalling specifically, but I will take it  
23 at face value that I did say that, yes.

24 Q. And then when Mr. Lanier walked you through your  
11:17:27 25 report for the specific facts to back up your opinions,

1 you actually mentioned some instances as it relates to  
2 various defendants here, right?

3 A. Yes.

4 Q. And I wanted to kind of go through some of those  
11:17:40 5 with you, if you'd be patient enough to do that.

6 A. Sure.

7 Q. And so I wanted to start, Dr. Lembke, on Page 78  
8 and 79 about promotional efforts, and I think you had  
9 mentioned in that some of the pharmacies advertise on  
11:18:15 10 their counters for opioids?

11 A. Yes.

12 Q. And, Dr. Lembke, fair to say there's no evidence  
13 that Giant Eagle ever did that?

14 A. Well, the evidence for Giant Eagle, there is --

11:18:29 15 Q. Ma'am -- Doctor, could you just answer my question?

16 There's no evidence that Giant Eagle ever  
17 advertised on their counters for opioids?

18 A. Well, I was trying to answer the question.

19 Q. Can you answer that one yes or no, do you have any  
11:18:51 20 evidence that --

21 A. That's not a yes or no answer for me. That's not a  
22 yes or no answer for me. I would have to elaborate on  
23 that.

24 Q. You don't -- you can't say for a fact yes or no  
11:19:07 25 that you have hard evidence that Giant Eagle advertised

1 opioids on its pharmacy counters?

2 A. So Giant Eagle participated in the medication  
3 Adheris program, which involves interactions between  
4 pharmacists and patient consumers at the counter.

11:19:26 5 Giant Eagle participated in Butrans and  
6 Kadian coupon programs which involves an exchange of  
7 information at the pharmacy counter.

8 Q. Let's talk about that.

9 Aside from that Butran opinion which I want  
11:19:41 10 to talk about, there was no advertisements that you're  
11 aware of at Giant Eagle pharmacy counters, like, "Hey,  
12 this is a great opioid, prescribe it"?

13 You've seen no evidence on that score?

14 A. I mean it depends what you are meaning by  
11:19:56 15 advertisements.

16 I do believe that the coupons are a form of  
17 advertising. I do believe that the Adheris programs were  
18 a form of persuasion/advertising.

19 And Giant Eagle did participate in those  
11:20:09 20 programs.

21 Q. I want to talk to you about that testimony, but I'm  
22 just asking you, Dr. Lembke, and maybe I'm not being  
23 clear, in terms of what's on their pharmacy counters,  
24 there was never any advertisements for opioids for Giant  
11:20:21 25 Eagle?

1 A. So it sounds like you're asking me if there was  
2 like a specific piece of paper or something on the  
3 counter.

4 Q. Yes, Doctor.

11:20:28 5 A. Not to my knowledge.

6 Q. And then on this promotional issue that you talked  
7 about, the Butrans issue that you mentioned, I believe  
8 that's on Page 79 and Page 80 of your report, if we could  
9 go to that.

11:20:42 10 And, Mr. Pitts, if I could have the Elmo.

11 Do you have it, Doctor?

12 A. Yes, I do.

13 Q. And, first, Doctor, I think this is what you were  
14 referring to, Page 79 and Page 80, where you talked about  
11:21:19 15 Giant Eagle working with Purdue?

16 A. Yes.

17 Q. Okay. And if we turn to Page 80.

18 By the way, Dr. Lembke, Butrans is a  
19 medicine, it's not a Schedule II opioid?

11:21:35 20 A. It's a Schedule III opioid.

21 Q. I'm sorry, it's not a Schedule II opioid?

22 A. No.

23 Q. Do you know --

24 A. It's a Schedule III opioid.

11:21:44 25 Q. Do you know if it's even at issue in this case?

1 A. What do you mean by, "At issue"?

2 Q. Do you know if it's even a part of the plaintiffs'  
3 lawsuit in this case?

4 A. I'm not sure I understand the question.

11:21:57 5 The defendants in this case are pharmacies.

6 Q. And maybe I misstated.

7 Do you know whether the plaintiffs are even  
8 suing about Butrans and dispensing of Butrans?

9 A. My role here is to assess the pharmacies and their  
11:22:20 10 practices and how their practices failed to meet the  
11 standard of the Controlled Substances Act.

12 It is my understanding that this case is  
13 about a public nuisance and whether or not pharmacy  
14 defendants in their actions contributed to a public  
11:22:37 15 nuisance, i.e. the opioid epidemic.

16 It's not my understanding that Butrans is  
17 on trial here.

18 Q. Okay. And Butrans, Dr. Lembke, is a medicine that  
19 people take when they're trying to get off of opioids,  
11:22:52 20 right? It's a withdrawal medicine?

21 A. No.

22 Butrans is a patch formulation of  
23 Buprenorphine, which is FDA-approved for the treatment of  
24 pain.

11:23:04 25 It is now frequently being used to help



1 people transition off of opioids because it comes in  
2 microdosing patches, but it's basically a pain treatment  
3 medicine and it's FDA-approved for that indication.

4 Buprenorphine in sublingual formulations,  
11:23:27 5 not Butrans, is approved to treat opioid addiction so  
6 they are very different drugs for different indications.

7 Q. Yes. And as you mentioned, often prescribed to  
8 help people get off, transition I think was your word,  
9 transition off of opioids?

11:23:42 10 A. That's really not how they have been used and not  
11 what they're FDA-approved for.

12 There's been some experimentation just in  
13 the last couple of years using a Butrans patch to help  
14 people bridge off, but that's very new and very  
11:23:58 15 experimental.

16 Butrans is a Buprenorphine, an opioid, in a  
17 patch form to treat pain, and that is what it is  
18 FDA-approved for.

19 Q. And, Doctor, as I understand your opinion here,  
11:24:13 20 Adheris, do you recognize that as a marketing company  
21 that Purdue Pharma worked with?

22 A. Yes.

23 Q. And what happened here looking at the documents  
24 that you cite is that Adheris and Purdue got together and  
11:24:27 25 said, "Let's do a mailing to a bunch of pharmacies to see

1 if we can have patients ask their doctor about Butrans."

2 Fair?

3 A. In collaboration with Giant Eagle, yes. That's  
4 fair.

11:24:40

5 Q. And as it relates to Giant Eagle, if you look  
6 carefully about what you say here -- and, Doctor, a lot  
7 of us get stuff in the mail from, you know, catalogs or  
8 on social media to sign up and do something, and most of  
9 the time, we ignore or we throw it out, right?

11:24:58

10 A. There's lots of evidence that direct-to-consumer  
11 advertising works and that's what this was.

12 These were letters on Walmart letterhead to  
13 patients encouraging them to ask their doctor for another  
14 prescription of Butrans.

11:25:13

15 Q. But that actually wasn't my question.

16 I guess my question, to be clear, is the  
17 truth is you have no evidence that Giant Eagle ever sent  
18 out the letters that you have in your report, that Giant  
19 Eagle ever approved or sent out to their patients these  
20 letters?

11:25:31

21 A. And I also have no evidence to the contrary.

22 Q. Doctor, the plaintiffs here are suing on very, very  
23 serious allegations, and I know you're not a lawyer, but  
24 you understand it's their burden to bring the evidence?

11:25:47

25 Do you understand that?

1 A. I'm not a lawyer.

2 Q. But as you put this in your report alleging that  
3 Giant Eagle collaborated with Purdue to enhance the  
4 dispensing of opioids, but the truth is you have no  
11:26:04 5 evidence that Giant Eagle ever sent these letters.

6 Fair?

7 A. That's fair, but again, I have no evidence that  
8 they didn't send the letters.

9 Q. Well, Doctor, millions of documents have been  
11:26:17 10 produced in this case and the plaintiffs selected Giant  
11 Eagle documents for you to review.

12 No evidence that Giant Eagle ever approved  
13 this program from Purdue or sent these letters to their  
14 patients, you have not seen any documents to that effect?

11:26:35 15 A. There were many instances in this case when I asked  
16 to see additional documents and they were not  
17 forthcoming.

18 Q. Produced millions of documents, you gave an opinion  
19 to the jury that Giant Eagle, that the folks at Giant  
11:26:50 20 Eagle collaborated with Purdue, and this is the evidence  
21 you cited, and the truth is you have no facts, no  
22 evidence, that Giant Eagle ever sent those letters, that  
23 they ever approved this program?

24 A. Well, I disagree with that. I think this is  
11:27:09 25 evidence.

1 Q. This is evidence, Doctor, when it says a template  
2 was offered by Purdue and the marketing company, a  
3 template was offered to Giant Eagle, but yet you have no  
4 evidence that Giant Eagle ever sent those letters.

11:27:23

5 Fair?

6 A. I feel like I've answered this question. I don't  
7 have much more to say about it.

8 Q. And, Dr. Lembke, no evidence that Giant Eagle ever  
9 gave free samples of opioids to patients?

11:27:45

10 A. That's true.

11 Q. And no evidence that Giant Eagle ever ran TV ads or  
12 had a sales force promoting opioids?

13 A. That is true.

14 Q. And, Doctor, no evidence that Giant Eagle shared  
15 their patient data with Purdue?

11:28:00

16 A. Well, I do think that this offer to send these  
17 letters directly to patients is a form of sharing data.

18 Q. The letter that came from Purdue and its marketing  
19 company that Giant Eagle you have no evidence ever sent,  
20 that's Giant Eagle sharing data?

11:28:20

21 A. When you're sharing patient addresses, that's data.  
22 It's important data.

23 Q. Where's your evidence, Dr. Lembke, that Giant Eagle  
24 ever shared patient addresses?

11:28:31

25 A. Again, the evidence is in the report. I don't have

1 more evidence than that.

2 Q. The evidence in your report is that Giant Eagle got  
3 an offer to send letters and there's no evidence they  
4 ever did?

11:28:45 5 A. Yes.

6 Q. Okay. You talked, Dr. Lembke, about people  
7 spending millions of dollars to fund continuing education  
8 programs about opioids, to influence medical curriculum,  
9 to lobby about availability of opioids.

11:29:07 10 Again, no evidence that Giant Eagle did any  
11 of those things?

12 A. Can I have a moment to look at my report?

13 Q. Sure.

14 (Pause.)

11:30:15 15 A. So on Page 93 of my report, I talk about how Purdue  
16 sales representatives, quote, "Worked contacts at Giant  
17 Eagle, a 150-store chain, to initiate a mailing of 550  
18 Lipman continuing education program materials to the  
19 chain's retail pharmacies. Purdue's e-mail described  
11:30:41 20 this program as a win-win for the customer and Purdue,  
21 which advanced the sales of Purdue products while  
22 educating, quote, while educating the health care  
23 professionals, unquote, and helping, quote, either both  
24 the prescription sales division or the hospital specialty  
11:31:02 25 division sell more of our products."

1 Q. Dr. Lembke, I'm going to ask you about that but  
2 that wasn't my question.

3 My question was about you had an opinion of  
4 millions of dollars that these pharmacy defendants spent  
11:31:17 5 lobbying on continuing -- on medical school curriculum.

6 There's nothing like that for Giant Eagle?

7 A. That is true. I don't have any evidence like that  
8 for Giant Eagle.

9 Q. And what you just cited to our jury is actually  
11:31:30 10 letters from Purdue to pharmacists, not to patients,  
11 right?

12 A. Yes.

13 Q. And, Doctor, you also had an opinion about inside  
14 information, about pharmacies sharing inside information  
11:31:44 15 about Purdue.

16 Again, Giant Eagle never did that?

17 A. No. As far as I know.

18 Q. And, Doctor, you mentioned Drug Enforcement  
19 Administration settlements and the *Holiday* opinion.

11:32:01 20 Giant Eagle never had any issues with the  
21 Drug Enforcement Administration?

22 A. Not as far as I know.

23 Q. No drug -- the Drug Enforcement Administration  
24 never found Giant Eagle to be in violation of any law?

11:32:14 25 A. Not as far as I know.

1 Q. There was never any Drug Enforcement Administration  
2 settlement for Giant Eagle?

3 A. That's correct.

4 Q. And, in fact, there was never even any drug  
11:32:27 5 enforcement action or allegation against Giant Eagle for  
6 violating any Controlled Substances Act law?

7 A. Not as far as I know.

8 Q. And that goes for the Department of Justice  
9 investigations that you mentioned, there was no  
11:32:41 10 Department of Justice investigation against Giant Eagle  
11 ever?

12 A. Not as far as I know.

13 Q. And then, Doctor, Dr. Lembke, did the plaintiffs'  
14 lawyers give you the verdict sheets in this case before  
11:33:03 15 you testified to tell you about what the questions our  
16 jurors are actually going to have to answer what this  
17 case is about?

18 MR. WEINBERGER: Objection.

19 THE COURT: Sustained.

11:33:15 20 Sustained.

21 BY MS. SULLIVAN:

22 Q. Doctor, are you aware this case is about what  
23 happened in Lake and Trumbull County?

24 A. Yes.

11:33:24 25 Q. And I'd like to, if there's no objection, put up a

1 piece of your trial testimony from yesterday, but first  
2 I'll show the plaintiff's lawyers.

3 And, Doctor, you were asked by Mr. Lanier  
4 whether you focused on any of the individual pharmacies  
11:34:06 5 in Lake and Trumbull County.

6 Do you remember that question?

7 A. Yes.

8 Q. And you -- and he asked you, "So the jury can be  
9 clear, we don't want to mislead in the least, you have  
11:34:18 10 not focused on individual pharmacists at the individual  
11 stores in these individual counties, fair?"

12 And your answer was: "That is correct"?

13 A. Yes.

14 Q. And you said you did a national review?

11:34:28 15 A. Yes.

16 Q. And you know that Giant Eagle is not a national  
17 store?

18 A. Yes.

19 Q. And to follow up I think on what Walmart's lawyer,  
11:34:38 20 Mr. Majoras, asked you, the truth is on the issue of  
21 whether there was illegitimate dispensing in Lake and  
22 Trumbull Counties by the pharmacists that went to the  
23 illicit or illegal market and caused harm, you have not  
24 looked at any of those pharmacies' data to determine that  
11:34:57 25 question?



1 A. Not at the level of individual pharmacies, no.

2 MS. SULLIVAN: Thank you, Dr. Lembke.

3 I have nothing further.

4 THE WITNESS: You're welcome.

11:35:06 5 MS. SULLIVAN: Safe travels home.

6 THE COURT: Okay. Any redirect from the  
7 plaintiffs?

8 MR. LANIER: Yes, Your Honor.

9 REDIRECT EXAMINATION OF ANNA LEMBKE

11:35:27 10 BY MR. LANIER:

11 Q. Good morning. Whoops, I forgot my pens, Your  
12 Honor. I'm sorry.

13 Good morning, Dr. Lembke.

14 A. Good morning.

11:36:09 15 Q. I have not spoken with you about your testimony  
16 since you began testifying.

17 True?

18 A. That is correct.

19 Q. All right. I still have a roadmap for you, though,  
11:36:18 20 to tell you how we're going to do this.

21 I want to, first, ask you about the  
22 questions the CVS lawyer asked you.

23 That would be yesterday afternoon bleeding  
24 over, I think, a little bit into this morning.

11:36:31 25 Okay?

1 A. Okay.

2 Q. Then we'll look at the ones the Walmart attorney  
3 asked you about.

4 All right?

11:36:37 5 And they know we'll do Mr. Stoffelmayr, the  
6 Walgreen's attorney, and we'll finish with Ms. Sullivan,  
7 the Giant Eagle attorney that just asked questions.

8 Okay?

9 A. Yes.

11:36:47 10 Q. All right.

11 First of all, and some of these questions  
12 bleed over into what other people said, but let's do it  
13 as best as we can.

14 On the issue of local versus national, the  
11:37:04 15 difference between one store and many stores, you with  
16 me?

17 A. Yes.

18 Q. Okay. Did you look at things on a local level?

19 A. I looked at things on a local level in terms of  
11:37:16 20 numbers of prescriptions, numbers of opioid overdose  
21 deaths.

22 I did look at that specifically in Lake and  
23 Trumbull Counties.

24 Q. But in terms of the stores themselves, did you look  
11:37:28 25 at the stores on an individual local level?

1 A. No, I did not.

2 Q. All right.

3 Does the national scope that you used  
4 include local stores?

11:37:40 5 A. Yes. All the defendants are chain pharmacies, and  
6 their policies are top down policies that are  
7 disseminated at all of the pharmacies.

8 Q. In other words, if there's a national policy for a  
9 national chain or a regional policy for a regional chain,  
11:38:01 10 would it apply, by your understanding, to all of the  
11 individual stores?

12 A. Yes, it would.

13 Q. All right. We'll come back to this theme with the  
14 other attorneys' questions, but let's stop there.

11:38:14 15 Next subject, I want to talk to you about  
16 your book and the gateway effect. You were questioned on  
17 this yesterday.

18 Do you remember that?

19 A. Yes.

11:38:24 20 Q. And specifically, you were questioned about whether  
21 or not, in your earlier testimony, you had said that this  
22 was not gateway; that you didn't know about the gateway  
23 or you weren't sure about the gateway.

24 Do you remember that?

11:38:37 25 A. I'm sorry. What testimony are you referring to?

1 Q. You were asked by Mr. Majoras yesterday, and he  
2 showed you a section of your trial testimony from New  
3 York?

4 MR. MAJORAS: This morning, Judge.

11:38:53 5 MR. LANIER: I'm sorry?

6 THE COURT: Mr. Bush.

7 Mr. Majoras was today is my recollection.

8 MR. LANIER: Your Honor, I messed up. Mea  
9 culpa, my fault.

11:39:03 10 BY MR. LANIER:

11 Q. You were asked by Mr. Graeme Bush, that fellow  
12 right over there in the gray suit with the face mask.

13 A. Yes.

14 Q. All right. You were asked by him yesterday and he  
11:39:15 15 showed you testimony as if it contradicted what you said  
16 about whether or not you believed in the gateway effect  
17 in your book.

18 Remember?

19 A. Yes, I do.

11:39:25 20 Q. And he borrowed, I think, my copy, but he put it up  
21 and to show the jury that if you look up "Gateway," it's  
22 not in the index.

23 Right?

24 MR. BUSH: Objection, Your Honor.

11:39:40 25 A. I don't think that's what he did.

1 Q. That's what was done --

2 THE COURT: Hold it.

3 MR. BUSH: I didn't actually do that.

4 THE COURT: I don't recall him doing it

11:39:50 5 either, Mr. Lanier.

6 MR. LANIER: And you all are both right and  
7 the witness has corrected me. That's what was done with  
8 the chain pharmacy this morning, Your Honor.

9 I apologize.

11:39:58 10 BY MR. LANIER:

11 Q. My point is, though, do you talk about the gateway  
12 effect in your peer-reviewed book?

13 A. Yes, I do.

14 Q. Do you have a section entitled, "The Gateway Now a  
11:40:11 15 Runway"?

16 A. Yes, I do.

17 Q. Do you have a section where you talk about Vicodin  
18 as a gateway drug?

19 A. Yes, I do.

11:40:23 20 Q. So when you were challenged on whether or not you  
21 had ever put into a peer-reviewed writing this gateway  
22 idea before you came into this lawsuit, what is your  
23 answer?

24 Have you?

11:40:37 25 MR. BUSH: Objection, Your Honor.

1 That mischaracterizes the course of my  
2 cross-examination.

3 THE COURT: Hold on.

4 Overruled.

11:40:43 5 Mr. Lanier is just asking a question. He  
6 didn't tie it to you.

7 MR. BUSH: I don't mind the question.

8 I mind the characterization of what's the  
9 predicate for it.

11:40:52 10 MR. LANIER: Ma'am --

11 THE COURT: Why don't you just --

12 MR. LANIER: I'll ask it differently.

13 THE COURT: Just ask the question,

14 Mr. Lanier.

11:40:58 15 BY MR. LANIER:

16 Q. Ma'am, have you published in peer-reviewed material  
17 about gateway effects before you were ever involved in  
18 this litigation?

19 A. Yes.

11:41:08 20 Q. Has it -- has being involved in this litigation  
21 altered your views at all?

22 A. No. It's just informed my views further because  
23 I've had access to more material, more evidence, that  
24 wasn't available to me prior to being involved in the  
11:41:26 25 litigation.

1 But it hasn't changed my views.

2 Q. All right. Next subject.

3 You were asked questions about the Partners  
4 Against Pain brochure.

11:41:38 5 Do you remember that?

6 A. Yes.

7 Q. And that brochure has been marked as CVS MDL  
8 Exhibit 4955.

9 And you have said that there was nothing  
11:41:48 10 false, but it was inadequate about diversion.

11 What else should have been in this  
12 brochure, ma'am? Or Doctor. Excuse me.

13 A. What should have also been in that brochure is that  
14 pharmacists should have checked the Prescription Drug  
11:42:07 15 Monitoring database prior to dispensing because that is  
16 one of the best objective ways to determine the presence  
17 of red flags.

18 Pharmacists should have used the data that  
19 they had at hand, and I'm not talking about really  
11:42:21 20 pharmacists; I'm really talking about pharmacies should  
21 have made those tools available to their pharmacists, for  
22 example, to look at prescriber patterns and identify  
23 potential pill-mill doctors.

24 The pharmacies had that data and could have  
11:42:39 25 created a system much earlier to help pharmacists know

1 who were the pill-mill doctors.

2 The pharmacies should have allowed their  
3 pharmacists to issue what's called blanket refusals if  
4 they identified a pill-mill doctor and not have to  
11:42:59 5 evaluate every individual prescription that came in from  
6 known pill-mill doctors.

7 The pharmacies, again, should have just  
8 created an environment and provided tools to empower  
9 pharmacists to detect and investigate red flags.

11:43:20 10 And the brochure should also have included  
11 that the problem of misuse and diversion and the opioid  
12 epidemic is not just a problem of people with addiction  
13 or criminals coming to the pharmacy with forged  
14 prescriptions. That is a part of the problem, but it's  
11:43:40 15 not the only part of the problem.

16 A huge part of the problem is the simple  
17 oversupply, the surges in dispensing, flooding our  
18 societies with these pills, huge quantities, high doses,  
19 putting the entire populous at risk; not just patient  
11:44:02 20 consumers.

21 Q. Doctor, I want to challenge you on part of your  
22 answer.

23 This brochure was 2001.

24 Were there PDMPs in 2001 that pharmacists  
11:44:15 25 could check?



1 A. That's true. They, for the most part, they did not  
2 have access to that.

3 But even then, the pharmacies should have  
4 made their data available to the pharmacists.

11:44:29 5 Q. Okay. Next, you were asked questions this morning  
6 by Mr. Bush about the communications on opioids, and  
7 specifically, I think he used Plaintiffs' Exhibit 8663,  
8 this June, 2001 letter put out on Partners Against Pain  
9 CVS Pharmacy letterhead addressed to the CVS pharmacists.

11:44:59 10 Do you see this?

11 A. Yes.

12 Q. And in regards to this 2000 letter, I'd like you to  
13 look at it a moment in detail and explain why you thought  
14 it important to emphasize the website that's put here for  
11:45:15 15 the pharmacists' information?

16 MR. BUSH: Objection, Your Honor.

17 The witness explained that during  
18 cross-examination. It's cumulative.

19 THE COURT: Overruled. Overruled.

11:45:25 20 A. Yes. So this is important because this meant that  
21 the content and the information that was being  
22 disseminated by Partners Against Pain was available on a  
23 website, and that it provided specific tools for pain  
24 assessment and other information that would certainly  
11:45:52 25 have influenced how pharmacists thought about the safety

1 and efficacy of opioids.

2 BY MR. LANIER:

3 Q. Doctor, have you looked at that website?

4 A. Yes, I have.

11:46:06 5 Q. Was it true and accurate in what it had to say  
6 based on your opinions?

7 A. That website is, first of all, it's very extensive.

8 There are many different tabs.

9 Secondly, it's full of the same misleading  
11:46:23 10 messages that were spearheaded by Purdue with statements  
11 to the effect that addiction is rare among pain patients  
12 prescribed an opioid by their doctor; that opioids are  
13 effective treatment for chronic pain; that no dose is too  
14 high; and that a doctor can continue to increase the dose  
11:46:47 15 without being concerned about risks; that essentially the  
16 problem of the opioid epidemic is a problem of those bad  
17 apples, those bad, bad addict people who are ruining it  
18 for the rest, and as long as we screen them out, there's  
19 no problem.

11:47:07 20 When, in fact, that is not the case.

21 People who are addicted are the same people who are  
22 chronic pain patients and vice-versa.

23 Q. And, Doctor, where the letter notes, "We hope you  
24 and your customers will visit this site."

11:47:28 25 A. Right. And so that's pertinent to some earlier

1 questioning whether or not CVS had communicated directly  
2 with not just prescribers but also patient consumers, and  
3 the point that I was trying to make before, and I'll try  
4 to make again, is that through their collaboration with  
5 Purdue and Partners in Pain, they were disseminating  
6 these messages directly to pharmacists who, in turn, were  
7 encouraged to encourage their customers to visit this  
8 website.

9 Q. And in that regard, this first person, plural  
10 pronoun, "We hope," is the "We" -- well, assuming the  
11 "We" means the people who sent the letter, can you tell  
12 us whether or not it affects your opinion that this  
13 letter is sent by a doctor at Purdue Pharma who is  
14 evidently a Vice President of Medical Affairs and  
15 Worldwide Drug Safety as well as the Director of Quality  
16 Improvement at CVS, the Director of Regulatory Compliance  
17 at CVS?

18 Does that make a difference to you?

19 A. Yes. So I was asked previously by Mr. Bush whether  
20 I could come up with any specific names of people at CVS  
21 who had disseminated these messages, these misleading  
22 messages, along with Purdue.

23 And I wasn't able to recall any at the  
24 time. But this reminds me that indeed, here are some  
25 specific names.

1 Q. All right. Next subject, and they know we'll be  
2 finished with CVS.

3 But this subject bleeds over into the  
4 others.

11:49:09 5 You were asked questions about specific  
6 names for programs.

7 Do you know about this program, this  
8 program, that program, remember those types of questions?

9 A. Yes.

11:49:18 10 Q. I want to lump them altogether, loop them  
11 altogether and ask you this: Without knowing the names,  
12 do you have the ability to testify to the issues of your  
13 expertise as you've done so?

14 A. Yes.

11:49:33 15 Q. Without knowing the particular names of each  
16 program, do you stand by your opinions?

17 A. Yes.

18 Q. And do you leave the details of pharmacy computer  
19 programs to our experts in that area?

11:49:49 20 A. Yes.

21 Q. You're not here to testify as a pharmacist, are  
22 you?

23 A. No.

24 Q. All right. Next on the road.

11:50:00 25 You were asked questions by the attorney

1 for Walmart, and now I get to say Mr. Majoras' name.

2 First of all, you were asked questions  
3 about your bias, and we got to hear you on that NPR  
4 interview.

11:50:15 5 Remember that?

6 A. Yes.

7 Q. And before he played the NPR interview where you  
8 said, "Oh, I'm certainly biased" or "Yes, I'm biased," he  
9 had asked you are you biased on the subject of opioids or  
11:50:29 10 something to that effect and you had said no in here.

11 Right?

12 A. That's right.

13 Q. Would you please explain to the jury what you're  
14 talking about, where you have a bias and where you don't?

11:50:40 15 A. So in the NPR interview with Terry Gross when she  
16 asked me if I was biased, what I meant in using that word  
17 "Bias" was that I had formed a very strong opinion but I  
18 do not believe that I came to the material with  
19 preconceived notions.

11:50:57 20 In fact, I was as duped as any other doctor  
21 in the earliest days of this epidemic. But because I  
22 essentially had a front row seat to the epidemic as an  
23 Addiction Medicine specialist, and through my research,  
24 which was revelatory for me as a physician prescriber  
11:51:18 25 trained in the late 1990s, mid to late 1990s, I did form

1 a very strong opinion and that's the sense in which I was  
2 using that word on Fresh Air.

3 Q. All right. And is that any different than what  
4 you've explained to us right now? I mean --

11:51:38

5 A. No. No.

6 I mean, the use of language was in  
7 retrospect unfortunate, but then again, I never imagined  
8 I would be sitting in a courtroom like this having it  
9 played back.

11:51:50

10 Q. All right. Next set of questions, and here I've  
11 got Mr. Majoras on your book.

12 He used your book and put "Pharmacy" or  
13 "Chain pharmacy," asked you are those words in your book.

14 My question to you is why not?

11:52:03

15 A. Well, I'm sorry. He actually asked me if those  
16 words were in the index.

17 Q. Ah. You're right.

18 A. And I said clearly they're not.

19 But those words are in my book. They're  
20 just not in the index.

11:52:15

21 Q. Okay. Explain in the context of your book why  
22 you've used the words you have and if you've not used  
23 them in other places relevant to this case, why that  
24 would be the case.

11:52:32

25 A. I used -- there's not much in my book on

1 pharmacies.

2 I do talk a little bit about it, especially  
3 in terms of online pharmacies and how online pharmacies  
4 became a way that people could order prescription opioids  
11:52:48 5 under the radar, including illegal online pharmacies.

6 The reason that I don't talk about  
7 pharmacies at any length in my book is twofold.

8 Number one, as I said before, the book is  
9 focused on the experience of the physician prescriber and  
11:53:08 10 how physician prescribers contributed to the opioid  
11 epidemic and why.

12 But the other reason was that I really  
13 hadn't yet researched the role and involvement of chain  
14 pharmacies. I wasn't aware because I hadn't researched  
11:53:26 15 it.

16 And since the publication of my book, I've  
17 had an opportunity to research chain pharmacies and to  
18 discover that pharmacies, too, are complicit in the  
19 opioid epidemic.

11:53:39 20 Q. Doctor, are you on the front line of fighting the  
21 results of this disease?

22 A. I'm sorry. Could you repeat the question?

23 Q. Yes, Doctor.

24 Are you on the front lines of fighting the  
11:53:52 25 results of this disease?

1 Do you deal with opiate addicts?

2 A. Yes, I do deal with people with opioid addiction.

3 Q. On a regular basis or infrequently?

4 A. Every clinic day.

11:54:05 5 Q. If you were not here today, would you be where?

6 A. Is it Thursday today?

7 Q. Just until midnight.

8 A. Okay. Thursdays I'm usually teaching, but  
9 sometimes I see patients on Thursdays.

11:54:19 10 Q. And what is your typical clinic day or days?

11 A. My typical clinic day starts at 8:00 and ends at  
12 5:00.

13 I see patients, new patients are usually an  
14 hour to an hour-and-a-half. Follow-up patients are  
11:54:35 15 usually 30-minute visits.

16 I see patients together with residents,  
17 fellows and medical students, so I'm supervising them so  
18 I'll go into one room, talk with the patient, with the  
19 fellow, come up with a plan, leave that room, go to the  
11:54:51 20 next room. So I'm seeing typically between 20 and 30  
21 patients a day on an average clinic day.

22 Q. All right.

23 Next set of questions by Walmart concerned  
24 your testimony about the knowledge of Walmart and others.

11:55:13 25 And you were shown testimony in this



1 regard. I want you to look at your testimony and explain  
2 the context in which that snippet was placed.

3 Okay?

4 I will put the testimony up here and let  
11:55:29 5 you and the jury see it and ask you to comment on it.

6 The question at first that was shown to you  
7 was, "Is it your testimony that pharmacists working in  
8 Lake or Trumbull County should have understood in 2005  
9 something that you yourself did not understand?"

11:55:54 10 You've got an answer that said, "I think  
11 the pharmacies had access to information that I as an  
12 individual prescriber did not have and, therefore, would  
13 have and could have known earlier than I could have  
14 known."

11:56:07 15 Explain, please, what you meant.

16 A. So pharmacies have access to all of the prescribers  
17 whose prescriptions are proffered at their pharmacies.

18 And that information is very valuable,  
19 especially in the context of an opioid epidemic where  
11:56:32 20 there are pill-mill doctors, there are doctors who are  
21 duped but are prescribing opioids in a way that's not  
22 inconsistent with the evidence or that's harming people.

23 Pharmacies had and have access to all of  
24 that prescriber information, which they could have and  
11:56:51 25 should have used.

1 I, as an individual prescriber, don't have  
2 any of that.

3 Q. So if the suggestion was made that you didn't  
4 become aware of this opioid problem until 2012, et  
11:57:03 5 cetera, how could you expect a Walmart to be aware, if  
6 that was the drive of this, let me ask you this question:

7 Did you see Walmart's settlement agreement  
8 with the Government?

9 A. Yes, I did.

11:57:15 10 Q. Did you --

11 MR. MAJORAS: Objection.

12 I would like to approach, Your Honor.

13 (Proceedings at side-bar:)

14 THE COURT: What is the objection?

11:57:40 15 MS. FUMERTON: Your Honor, this is Tara  
16 Fumerton for Walmart.

17 Based on your prior rulings, there are five  
18 settlement agreements. We have a pending objection that  
19 is before Special Master Cohen with respect to other  
11:57:51 20 witnesses. They told us with respect to this witness  
21 they were not going to raise this issue so we withdrew it  
22 the other day when we were going to discuss it with you.

23 But effectively, the five settlements over  
24 a long period of time, two of which are recordkeeping  
11:58:06 25 violations, two other ones deal with a single pharmacy,

1 not Ohio.

2 THE COURT: All right.

3 Mister -- all right. What settlement  
4 agreement are you planning to show to this witness?

11:58:18 5 MR. LANIER: Your Honor, I wasn't going to  
6 show one.

7 What I was going to do with this witness is  
8 ask her if she had seen the settlement agreement and if  
9 that affects her --

11:58:27 10 THE COURT: Well, some are -- some may not  
11 even be admissible.

12 MR. LANIER: And I would not be using  
13 those, Your Honor.

14 I'm referring specifically to --

11:58:35 15 THE COURT: So I'm going to sustain the  
16 objection unless it's clear that you're talking about one  
17 that I've already allowed in.

18 MR. LANIER: Your Honor, I'm talking about  
19 the 2011 agreement which meets all of your criteria.

11:58:46 20 THE COURT: Let me see that.

21 MR. LANIER: Okay. Your Honor, in the  
22 interests of time, can I move on and come back to that?

23 THE COURT: All right. That's fine.

24 (End of side-bar conference.)

11:59:09 25

1 BY MR. LANIER:

2 Q. Dr. Lembke, I want to see if I can come back to  
3 that later but I want to ask you some other questions  
4 relevant to Walmart knowledge before -- I mean other than  
11:59:19 5 that. Okay?

6 THE COURT: If you're moving on to another  
7 subject, it's probably a good time to break for lunch.

8 MR. LANIER: Okay, Your Honor. All right.  
9 I'm fine breaking right now and then I'll keep in the  
11:59:30 10 flow, I'll find them over lunch.

11 THE COURT: Okay. Ladies and gentlemen, we  
12 will take our noon recess, one hour.

13 Again, all the normal admonitions apply and  
14 we'll see you all after lunch.

11:59:42 15 (Jury out.)

16 THE COURT: Okay. In addition to figuring  
17 out what we're doing with this one Walmart settlement, I  
18 guess early this morning or late last night, I don't  
19 know, the plaintiffs filed an emergency motion to  
12:00:36 20 videotape the trial testimony of Joe Rannazzisi, who I  
21 guess they're planning to call next week live.

22 First, exactly how would you do this in an  
23 unobtrusive -- if it can't be done unobtrusively, it's  
24 out.

12:00:56 25 So how would you do it?

1 MR. LANIER: Your Honor, if you would allow  
2 it, I think the way it would be done is by hitting a  
3 record button on the video that is being transmitted to  
4 the other places.

12:01:09 5 So it would just be --

6 THE COURT: So it wouldn't need a big  
7 camera or anything?

8 MR. LANIER: Correct, Your Honor.

9 And if we could record that, just, it would  
12:01:16 10 change nothing in the courtroom. It would just be  
11 someone hits a record button.

12 Then you can always look at it afterwards  
13 and decide whether or not it can be used or should be  
14 destroyed. It could be done and kept totally within your  
12:01:31 15 purview.

16 THE COURT: All right. I think you should  
17 discuss it with defendants and see if they have any  
18 objection to that.

19 If not, you can do it that way.

12:01:38 20 MR. STOFFELMAYR: Judge, one comment on  
21 that. Kaspar Stoffelmayr.

22 Obviously we got this late last night, too,  
23 but I just want to flag there are 20-odd other pharmacy  
24 chains involved in the MDL who are not part of this.

12:01:55 25 THE COURT: That may be but it's really

1 only the people here who would object because it's  
2 recording this, this witness, all right? I'm not saying  
3 it can be used at all.

4 But in my view, I don't think anyone else  
12:02:09 5 has a -- has an objection that I would really consider.

6 MR. STOFFELMAYR: Understood.

7 Thank you.

8 THE COURT: All right. I guess, you know,  
9 by no later than tomorrow, I'd like to know if there are  
12:02:22 10 any objections, and if there are, what they are.

11 Again, I'm not saying this would  
12 ever -- I'd ever allow the deposition to be used in lieu  
13 of testimony, but they've asked to record this one  
14 witness so okay.

12:02:36 15 MR. MAJORAS: Your Honor --

16 MR. LANIER: For housekeeping I just wanted  
17 to let you and defendants know I think I've got about 10  
18 or 15 minutes left max with this witness and our next  
19 witness will be Carmen Catizone so the Court's aware.

12:02:48 20 THE COURT: Okay. Thank you.

21 MR. MAJORAS: Your Honor?

22 THE COURT: Yes.

23 MR. MAJORAS: John Majoras.

24 I assume when we come back, we can address  
12:02:54 25 the agreement issue we just raised with Walmart.

1                   There's one other matter.

2                   THE COURT: I'd like to see this if someone  
3 would give it to me.

4                   MR. MAJORAS: There's one other matter I'd  
12:03:05 5 like to raise because it may come up particularly with  
6 the next witness.

7                   As you are aware, there's a lawsuit that  
8 the Department of Justice filed against Walmart.

9                   THE COURT: I'm well aware of it.

12:03:15 10                  MR. MAJORAS: In 2020. And we believe  
11 fully within the rulings you've already made in this  
12 case, it's not admissible, not usable in this case  
13 because of the allegations, the highly prejudicial  
14 nature.

12:03:24 15                  If plaintiffs assure me they're not going  
16 to use it, then we don't need to do anything.

17                  I will also let you know that there was a  
18 conversation I held with Mr. Weinberger, Mr. Lanier and  
19 Special Master Cohen, which we all agree and I'll share  
12:03:38 20 with other counsel, that our obligation is to make sure  
21 our witnesses are aware of *Daubert* rulings or  
22 inadmissibility rulings so they don't inadvertently bring  
23 something up.

24                  THE COURT: Good idea.

12:03:50 25                  MR. LANIER: From the plaintiffs

1 perspective, I have no intention of getting into that. I  
2 don't think it would be right and I think you would hold  
3 me in contempt. And I'll speak to the witness about it.

4 THE COURT: That's a good point,  
12:04:02 5 Mr. Majoras, you know, because witnesses I don't expect  
6 them to have read *Daubert* rulings or things like this. I  
7 mean I would be surprised if they did.

8 So if any of you know that your witness  
9 would, you know, would be aware of things like that, you  
12:04:15 10 should caution them not to -- not to refer to it in an  
11 answer inadvertently or whatever, that they are to avoid  
12 referring to it in any way.

13 MR. MAJORAS: Thank you, Your Honor.

14 MR. LANIER: Your Honor, in that sense,  
12:04:29 15 just to make the record complete, so hopefully I'm not in  
16 trouble, Mr. Majoras -- Mr. Majoras pointed out to me  
17 that Ms. Lembke, Dr. Lembke had done that in a quick  
18 reference.

19 I did ask Mr. Majoras if he was comfortable  
12:04:46 20 that I just explain to her she's not allowed to reference  
21 anything criminal and so I did say to her in the hall,  
22 "By the way, you're not allowed to say anything about any  
23 criminal investigation," and I do want the record to  
24 reflect that I said that to the witness during the break.  
12:05:05 25 And when I said I hadn't talked to you about your



1 testimony, I wasn't talking to her about her testimony.

2 I was merely emphasizing that, but I just  
3 want the record to be clear that I did do that.

4 THE COURT: All right.

12:05:16 5 MR. MAJORAS: Your Honor, I did agree with  
6 that.

7 I also pointed out there was a settlement  
8 amount for one of the other defendants that was mentioned  
9 yesterday, Mr. Lanier took that into account, and again I  
12:05:25 10 just want to make sure there's not -- he's not  
11 differentiating criminal from the DOJ complaint. We  
12 think that is clearly inadmissible.

13 THE COURT: All right. I agree.

14 The pending lawsuit, it's just an  
12:05:35 15 allegation and no one should be referring to it at all.

16 MR. MAJORAS: Thank you.

17 MR. DELINSKY: Your Honor, may I be heard  
18 on a related issue?

19 THE COURT: Yeah.

12:05:45 20 MR. DELINSKY: The CVS settlements that you  
21 have let in thus far, several of which are no different  
22 than the Walmart lawsuit, insofar as they are only  
23 allegations --

24 THE COURT: Well, no, they were  
12:05:55 25 settlements. That's different. The Walmart is pending.

1 MR. DELINSKY: Yes, one of the main  
2 differences is Rule of Evidence directly on point that  
3 says they don't come in. But be that as it may, over our  
4 objection, they have come in. They have come in with the  
12:06:08 5 CVS witness.

6 The purpose for which you have allowed them  
7 to come in, notice, is now established.

8 There are cases and I'm thinking in  
9 particular and I can give Your Honor a cite of a case, a  
12:06:22 10 Judge Facciola case -- the case by Judge Facciola  
11 approved by Judge Lamberth, who I'm sure you know as  
12 well, in the District of Columbia, that in this instance  
13 have noted that when a settlement comes in for a  
14 nonliability purpose, it comes in for the most  
12:06:45 15 minimum -- one time, the most minimum possible way, once  
16 notice is established.

17 And at that point, particularly with expert  
18 witnesses or even other fact witnesses, experts can't be  
19 used as a conduit to continue to repeat the number and  
12:07:02 20 content of these settlements, especially, not only  
21 because of the further prejudice from this once it's  
22 established, but especially because notice, Your Honor,  
23 is a question of fact; not opinion.

24 And the notice already was set by the fact  
12:07:20 25 testimony to the fact witness.

1 So I think at this point in time,  
2 especially with expert witnesses and nonCVS witnesses, we  
3 can address further CVS fact witnesses down the road, it  
4 needs to stop.

12:07:32 5 It's in, and every single time another of  
6 these settlements continue to be measured, the unfair  
7 prejudice is amplified and it gets worse and worse and  
8 worse.

9 THE COURT: Well, you made a good point.  
12:07:45 10 I think --

11 MR. WEINBERGER: Your Honor, can we  
12 have --

13 THE COURT: This is --

14 MR. WEINBERGER: Can we have a chance to  
12:07:51 15 look at these cases that he cited?

16 THE COURT: But you don't need notice.  
17 You've got it in for notice. Seems to me for the fact  
18 witness, the only way it's relevant is if you have  
19 someone in responsibility, and the issue is you asked  
12:08:03 20 him, I mean, did you do anything as a result of it.

21 And then that's different. It's not  
22 notice. It goes to --

23 MR. WEINBERGER: Right.

24 THE COURT: -- what the witness did or  
12:08:14 25 didn't do to change practices, and that's different.

1 And so the focus there is not the  
2 settlement agreement; it's the -- what the witness did or  
3 didn't do in a position of responsibility.

4 MR. WEINBERGER: Right.

12:08:25 5 THE COURT: But as for notice, we don't  
6 need it further.

7 And while you're on that, I -- there are a  
8 whole lot of documents that were shown to Dr. Lembke.  
9 None of them were offered into evidence.

12:08:40 10 I don't know, you asked for some limiting  
11 instruction to highlight -- you want me to highlight a  
12 particular document and say the jury's only to consider  
13 it for -- I mean, I don't know what kind of limiting  
14 instruction you're asking for, Mr. Delinsky, and how it  
12:08:57 15 would be done.

16 So I suggest you discuss this with the  
17 plaintiffs and see if you can work something out.

18 MR. DELINSKY: All right.

19 MR. WEINBERGER: But we, Your Honor, to be  
12:09:07 20 clear, we haven't -- she hasn't finished.

21 THE COURT: Understood.

22 MR. WEINBERGER: It's not the end of the  
23 day and so we haven't moved for admission of these  
24 documents yet.

12:09:15 25 On the issue of settlements, the

1 settlements that you've allowed to be presented to the  
2 jury on opening statement were settlements that contained  
3 admissions.

4 So there's no limiting instruction required  
12:09:33 5 with respect to that.

6 Secondly, the other settlement agreements,  
7 including the one you're reviewing now, Your Honor, with  
8 respect to Walmart, is -- are settlement agreements in  
9 which Walmart promises to the DEA that they intend to  
12:09:52 10 comply with the Controlled Substances Act by, in part,  
11 setting up red flag systems and other dispensing policies  
12 that will further their compliance with the DEA's  
13 regulations.

14 And I think to reiterate or to confirm what  
12:10:20 15 you've already said, how they responded to that,  
16 including how they responded during the compliance  
17 period, which in the 2011 agreement is four years, what  
18 they did or didn't do or what they did after the  
19 compliance period ended in 2015, and whether or not they  
12:10:43 20 changed their policies and didn't comply, are all issues  
21 that are relevant, not only factually.

22 THE COURT: I agree, and that should  
23 be -- that's, quite frankly, that's the significance of  
24 these agreements.

12:10:56 25 There's no admission but certainly it puts

1 the company on notice that DEA had a problem.

2 And so the key really is, you know, did the  
3 company do anything as a result. And that -- and  
4 witnesses who are in a position to know that can be asked  
12:11:17 5 that.

6 I don't want, you know, witnesses who are  
7 not in a position to know, I think it's improper and  
8 prejudicial. But if it's a witness who is in a position  
9 to know, he or she can be asked about that.

12:11:31 10 So, all right.

11 MS. FUMERTON: Your Honor, just to be clear  
12 what we're talking about, we're talking about the  
13 singular settlement agreement.

14 THE COURT: I'm speaking in general, Ms.  
12:11:43 15 Fumerton, about settlement agreements in general.

16 The focus in this case is over a long  
17 period of time, all right? And no one -- you know, what  
18 you did or didn't do in 2001, all right, there may be an  
19 explanation for it, but that explanation may not be very  
12:12:04 20 convincing in 2015.

21 So that's what -- that's what these are  
22 about.

23 So I will look at -- I will look at this  
24 one. This is -- I know it's Exhibit 14711, so I'll look  
12:12:20 25 at this over the noon hour.

1 MR. WEINBERGER: Thank you, Judge.

2 MS. FUMERTON: Thank you.

3 (Luncheon recess taken.)

4 (Proceedings concluded at 12:12 p.m.)

12:12:39

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1                   THURSDAY, OCTOBER 7, 2021, 1:02 P.M.

2                   THE COURT: All right. Please be seated.

3                   All right. What, Mr. Lanier, for what  
4                   purpose are you planning to use 14711 with this witness?

13:02:23 5                   MR. LANIER: Your Honor, Walmart suggested  
6                   that this witness has no basis for knowing what Walmart  
7                   should or shouldn't have known before the 2013 time to  
8                   2015 time range where this witness had culminated her  
9                   knowledge about the dangers of overprescribing.

13:02:43 10                   And this is one of the documents that would  
11                   show that Walmart -- that she's looked at that shows  
12                   Walmart would have been on notice and aware of the fact  
13                   that there were issues related to such problems prior to  
14                   Dr. Lembke herself.

13:03:02 15                   MR. MAJORAS: Your Honor, those are -- I  
16                   never asked -- I'm sorry.

17                   I asked this witness questions about 2001,  
18                   what Walmart knew before 2001.

19                   I asked her personal experience, 2013 and  
13:03:15 20                   '14, which she answered.

21                   I didn't ask any questions about her  
22                   comparing.

23                   MR. LANIER: No, I think he did, Your  
24                   Honor.

13:03:20 25                   I think he specifically asked her along the



1 lines of whether or not she expected Walmart to know  
2 something that she hadn't yet figured out.

3 MR. MAJORAS: Which again was 2005.

4 THE COURT: Well, unless I see that she was  
13:03:40 5 specifically asked about something in this time period,  
6 2011, 2012, it's not relevant.

7 If she was, then it is.

8 MR. LANIER: Agreed, Your Honor.

9 We'll pull that record transcript up, and  
13:03:54 10 if I can't supply it to you before I ask the question, I  
11 will not ask it.

12 THE COURT: Okay. We can bring them in.

13 (Jury in.)

14 THE COURT: Okay. Please be seated, ladies  
13:06:18 15 and gentlemen.

16 And, Doctor, I just want to remind you that  
17 you're still under oath.

18 All right. Mr. Lanier, you may continue.

19 MR. LANIER: Thank you, Your Honor.

13:06:28 20 REDIRECT EXAMINATION OF ANNA LEMBKE (RESUMED)

21 BY MR. LANIER:

22 Q. To keep us oriented, we were talking about the  
23 Walmart questions before the break, specifically about  
24 the issue of what knowledge Walmart may have had that's  
13:06:38 25 different than the knowledge you as a doctor have had.

1 Remember that subject?

2 A. Yes.

3 Q. Would it be relevant to you in your opinions of  
4 Walmart having knowledge you didn't have, would it be  
13:06:49 5 relevant to you if you had known that in 2007, Purdue had  
6 pled guilty for fraud?

7 A. Yes. That would have been relevant if I had known  
8 that Walmart had known that.

9 Q. Did you know in 2007 that Purdue had pled guilty  
13:07:10 10 for fraud in regards to their marketing and working with  
11 opiates?

12 A. I did not know that in 2007.

13 I did know that later.

14 Q. In that regard, would it matter to you if you tried  
13:07:33 15 to figure out Walmart's knowledge compared to yours, if  
16 you had known that Walmart had an entire Health and  
17 Wellness department in charge of keeping up with such  
18 things?

19 A. Yes, that would have mattered.

13:07:49 20 Q. Why?

21 A. Well, because that would have been evidence that  
22 Walmart was keeping abreast of Purdue and what was  
23 happening to Purdue vis-a-vis their misleading marketing  
24 messages.

13:08:16 25 Q. All right. Next subject within this area as well.

1                   You were asked some questions about the FDA  
2                   and this drug being safe and effective.

3                   Do you remember those questions?

4           A.     Yes.

13:08:30 5           Q.     All right. Why is it important that when you say  
6                   something is approved as safe and effective by the FDA,  
7                   why is it important to you as a doctor to have that  
8                   additional phrase that's there that says, "For their  
9                   intended use"?

13:08:49 10          A.     Because when the FDA approves something as safe and  
11                   effective, they're not saying it's safe and effective for  
12                   everything under the Sun.

13                   They're saying it's safe and effective for  
14                   certain types of medical diagnoses.

13:09:05 15          Q.     In that regard, I'll ask you, does safe and  
16                   effective mean there are no unsafe issues with opioids?

17           A.     I'm trying to understand that.

18           Q.     Let me ask it this way.

19           A.     Yeah.

13:09:22 20          Q.     When the FDA approves opioids as a safe and  
21                   effective treatment for its intended uses, does that mean  
22                   that the FDA has decided opioids are 100 percent safe,  
23                   there's no problem?

24           A.     No. That's not what it means.

13:09:39 25          Q.     Does that mean that any drug approved by the FDA

1 can be prescribed by you doctors with no concerns about  
2 safety issues?

3 A. No.

4 Even once a drug is approved by the FDA,  
13:09:55 5 prescribers have to consider the risks, benefits, and  
6 alternatives based on the information that they have.

7 Q. All right. To the next questions.

8 Mr. Majoras for Walmart asked you some  
9 questions about Lake and Trumbull Counties so I want to  
13:10:12 10 ask you about them in the reference in which he did it.

11 Are you the plaintiffs' witness for Lake  
12 and Trumbull Counties and the specific pharmacies on a  
13 county level?

14 A. No.

13:10:28 15 Q. Are you a witness for us on national policies and  
16 national actions?

17 A. Yes.

18 Q. By the way, do all diverted pills have to come from  
19 within the county anyway?

13:10:46 20 A. No. One of the key features of diversion is that  
21 people will travel a far geographic distance to get  
22 opioid pills, and it's well known that, for example,  
23 patients traveled from remote regions to places like  
24 Florida to get pills from pill-mill-type pharmacies  
13:11:12 25 before traveling back to their home region.

1 Q. Okay. All right. Doctor, that takes us through  
2 the Walmart stop.

3 Now we move to Walgreen's, please.

4 Mr. Stoffelmayr for Walgreen's asked you  
13:11:32 5 some questions about Dr. Saeger's presentation, and he  
6 showed you an exhibit marked P-25984, and it was a  
7 question about confirming that Louis Saeger, M.D. is  
8 scheduled, as per your request -- this is Walgreen's  
9 request -- to lecture at Double Tree Suites in Washington  
13:12:07 10 on January 19th, 1999.

11 Do you see this?

12 A. Yes.

13 Q. And the letter that was proffered by  
14 Mr. Stoffelmayr is on Purdue letterhead.

13:12:17 15 Do you see that as well?

16 A. Yes.

17 Q. All right. And he asked you about the  
18 qualifications of Dr. Saeger.

19 You said you don't know?

13:12:26 20 A. Yes.

21 Q. I would like to ask you a couple of relevant  
22 questions as follow up to that, and here's the first one.

23 Can you explain, please, what a KOL is to  
24 the jury?

13:12:41 25 A. A KOL is a key opinion leader, and this was a

1 well-detailed strategy that Purdue Pharma and others  
2 adopted to essentially create relationships with doctors  
3 and others who they identified as key opinion leaders,  
4 people who would effectively promote their product under  
13:13:08 5 the guise of education and science.

6 And it turned out to be a very effective  
7 strategy to promote opioids, including disseminating the  
8 misleading messages that we've talked about.

9 Q. So in that regard, would you explain to the jury  
13:13:25 10 why you were comfortable and your reasons for speaking to  
11 the idea that Purdue and a collaborator was behind in the  
12 messaging? That may not make sense. It did when I wrote  
13 it.

14 Let me ask it this way. Doctor, you said  
13:13:45 15 that you tried to find this lecture.

16 Why did you try to find it?

17 A. Because I wanted to see specifically what was in  
18 the lecture to confirm that it contained the misleading  
19 messages that I had been talking about.

13:14:00 20 Q. And you explained to Mr. Stoffelmayr that you had  
21 not been able to locate it, but yet you still felt fairly  
22 confident that it would have contained information that  
23 you think is poor information or misinformation.

24 Why are you comfortable saying that?

13:14:16 25 A. Because Dr. Saeger was a key opinion leader

1 identified by Purdue, and as such, they would not have  
2 identified and sponsored him unless he was going to  
3 disseminate the messages that they wanted disseminated.

13:14:40

4 Q. In that regard, are you familiar with the  
5 congressional finding regarding Purdue using and paying  
6 key opinion leaders?

7 A. I'm not sure.

8 Q. Fair enough.

13:14:59

9 Next, Mr. Stoffelmayr asked you about  
10 Walgreen's and theft and that agreement to restock a  
11 Walgreen's.

12 Do you remember those questions?

13 A. Yes.

13:15:13

14 Q. In that regard, mine is this: Did the agreement to  
15 replace stock, Purdue agreed to replace stock that was  
16 stolen, did that agreement require Walgreen's to increase  
17 their safeguards on the stock based upon your reading?

18 MR. STOFFELMAYR: Objection, Your Honor.

19 The agreement's not on her materials list.

13:15:34

20 MR. LANIER: This is what he asked about.

21 THE COURT: Overruled.

22 MR. LANIER: Yeah.

23 THE COURT: Overruled.

24 A. No, it did not.

13:15:39

25

1 BY MR. LANIER:

2 Q. Okay. Is that a good thing or a bad thing?

3 A. That is a very bad thing.

4 Q. Why?

13:15:44 5 A. Well, because if a pharmacy was subject to theft,  
6 robbery, it had a bunch of their opioids stolen, that is  
7 a pharmacy in which there should be closer scrutiny of  
8 their safeguards and potentially improvement of their  
9 systems.

13:16:08 10 To just replace the opioid stock without  
11 any regard to that is concerning.

12 Q. All right. Next subject, you were asked about  
13 restrictive and loose policies.

14 My question to you is this: If the  
13:16:26 15 pharmacy changes their policies after they get in trouble  
16 with the DEA, does that excuse their prior actions?

17 MR. STOFFELMAYR: Objection.

18 Beyond the scope of cross.

19 MR. LANIER: This is directly on the scope,  
13:16:36 20 Your Honor, of the restrictive policies and he's --

21 THE COURT: Overruled.

22 MR. LANIER: Thank you.

23 A. No. It doesn't excuse their prior actions.

24 BY MR. LANIER:

13:16:46 25 Q. Does it erase the consequences that you have



1 testified to from prior actions?

2 A. No.

3 Q. Okay. Thank you.

4 Last stop, Giant Eagle. Let's start with  
13:17:05 5 size questions.

6 You were asked questions, and there was an  
7 assumption that -- in the question that the Giant Eagle:  
8 Stores close at 9:00 p.m. I think some of them it's  
9 11:00. That makes no difference to me whether it's 9:00  
13:17:21 10 or 11:00, but does size make any difference as to whether  
11 or not you should follow the law?

12 A. No.

13 Q. Does it make any difference as to whether or not  
14 you should follow good prescribing habits?

13:17:32 15 A. No.

16 Q. Does it make any difference whether or not you  
17 should give your pharmacists the tools to use to prevent  
18 diversion?

19 A. No.

13:17:39 20 Q. Does it make any difference in whether or not you  
21 give your pharmacies the training they need to prevent  
22 diversion?

23 A. No.

24 Q. Does the fact that a pharmacy exists in a grocery  
13:17:54 25 store mean that the pharmacists don't need the tools to

1 prevent diversion?

2 A. No.

3 Q. Does the fact that a pharmacy exists in a  
4 training -- in a grocery store mean that you don't need  
13:18:04 5 to give your pharmacists the training they need to  
6 prevent diversion?

7 A. No.

8 Q. And then you were asked questions in this regard  
9 about the store itself.

13:18:17 10 Are your statements valid if the evidence  
11 turns out to be that Giant Eagle has 19,000 employees in  
12 five states with 216 supermarkets?

13 Does that -- does size mean anything to  
14 you?

13:18:35 15 A. Well, that, that sounds sizable, but my review of  
16 the evidence is not based on size.

17 It's based on their policies and  
18 procedures.

19 Q. Fair enough. Next subject.

13:18:49 20 You were asked questions about Butran. Am  
21 I saying it right, is it Butran or Butran?

22 A. Butran.

23 Q. Butran, all right.

24 And you were asked is Butran on trial.

13:19:00 25 Do you remember those questions?

1 A. Yes.

2 Q. Well, is Butran an opioid?

3 A. Yes.

4 Q. Are opioids the issue that you're here to testify  
13:19:11 5 about?

6 A. Yes.

7 Q. Is Butran addictive?

8 A. Yes.

9 Q. Does Butran work on those dopamine, that brain loop  
13:19:23 10 you talked about yesterday?

11 A. Yes.

12 Q. So is Butran relevant to your testimony in this  
13 case about opioids?

14 A. Yes.

13:19:36 15 Q. Last area. No. Second-to--the last area.

16 Sorry, Judge.

17 You were asked questions specifically about  
18 a letter and whether or not the letter was sent, and this  
19 is in reference to a letter you talk about on Page 80 of  
13:19:57 20 your report.

21 Do you remember that question, those  
22 questions?

23 A. Yes.

24 Q. I want to ask you what is your proof of the  
13:20:03 25 likelihood that it was sent?

1 MS. SULLIVAN: Objection, Your Honor.

2 Calls for speculation.

3 MR. LANIER: Your Honor, I don't think --

4 THE COURT: Well, rephrase that.

13:20:15 5 MR. LANIER: Yeah. I'd like to rephrase  
6 it.

7 Thank you, Judge.

8 BY MR. LANIER:

9 Q. First of all, when I asked you at the very  
13:20:21 10 beginning of your testimony to restrict your opinions to  
11 those that seemed reasonably probable, do you remember  
12 that?

13 A. Yes.

14 Q. I want to ask you in terms of what's reasonably  
13:20:32 15 probable in your opinion, what your basis was for saying  
16 that you believed there was an undue relationship between  
17 Giant Eagle and Purdue as witnessed in the paragraph that  
18 Ms. Sullivan put in front of the jury that I've now put  
19 back in front of the jury.

13:20:52 20 A. So I think it's reasonably probable that these  
21 letters were actually sent, and I base that on the fact  
22 that the templates for the letters submitted for Giant  
23 Eagle approval had Giant Eagle letterhead on them.

24 Q. Okay. The fact that this is an agreement you talk  
13:21:18 25 about, does -- that the program will be offered to the

1 retail pharmacy chains, is that relevant to your opinion?

2 A. I mean, yes.

3 It -- it implies that it was, indeed,  
4 offered.

13:21:43 5 Q. Okay. The agreement that called for 72,520 letters  
6 to be mailed out, did you ever see those 72,520 letters  
7 under the agreement?

8 A. No.

9 Q. Okay. Last subject.

13:22:05 10 The Giant Eagle attorney also asked you  
11 what you did or didn't do in regard to examining Giant  
12 Eagle's dispensing within its stores.

13 Remember?

14 A. Yes.

13:22:14 15 Q. Okay. My question is, we've already established  
16 you're not a pharmacist, I don't need to ask that again,  
17 but did you leave the store pharmacy dispensing questions  
18 to our pharmacist expert to answer instead of you?

19 A. I do include in my report opinions on pharmacy  
13:22:36 20 dispensing.

21 Q. Okay. But in terms of examining store by store,  
22 how the pharmacists behaved and whether or not it was  
23 proper, is that your area of testimony?

24 A. On a store-by-store level? That is for other  
13:22:53 25 experts.

1 Q. Thank you.

2 MR. LANIER: Your Honor, I'll pass the  
3 witness.

4 THE COURT: Any -- any redirect?

13:23:03 5 MS. SULLIVAN: Nothing further, Your Honor.

6 MR. MAJORAS: Very brief, Your Honor.

7 THE COURT: Okay.

8 RECROSS-EXAMINATION OF ANNA LEMBKE

9 BY MR. MAJORAS:

13:23:30 10 Q. Dr. Lembke, John Majoras, one of the Walmart  
11 lawyers. You heard a little bit about me in the last few  
12 questions and that's what I wanted to ask you, one  
13 follow-up question on one area.

14 Mr. Lanier asked you whether you're aware  
13:23:41 15 that Walmart has a Health and Wellness department.

16 Do you recall that?

17 A. Yes.

18 Q. And you weren't here when I introduced the Vice  
19 President of Health and Wellness to the jury, were you?

13:23:50 20 A. No.

21 Q. And are you aware that the Health and Wellness  
22 department simply operates the Walmart pharmacies?

23 A. I'm not that familiar with it.

24 Q. Okay. And he then followed up with a question  
13:24:05 25 about the Purdue plea to fraud charges.

1                               You now are aware of that, correct?

2           A.       Yes.

3           Q.       You weren't aware of it when it happened in 2007?

4           A.       No.

13:24:14 5           Q.       But you now are aware that that was a court  
6           proceeding, correct?

7           A.       Yes.

8           Q.       And it was publicly available to everyone, correct?

9           A.       I don't know.

13:24:26 10          Q.       Okay. You've had no problem learning about it when  
11          you started doing your research, have you?

12          A.       No.

13                       MR. MAJORAS: Thank you.

14                       MR. STOFFELMAYR: Judge, may I ask a couple  
13:24:49 15          questions?

16                       THE COURT: Yes, Mr. Stoffelmayr.

17                       MR. STOFFELMAYR: Thank you, Judge.

18                       REXCROSS-EXAMINATION OF ANNA LEMBKE

19                       BY MR. STOFFELMAYR:

13:24:54 20          Q.       Doctor, I just want to come back real quick to the  
21          questions about theft and you offered some testimony a  
22          minute ago about the agreement between Purdue and  
23          Walgreen's.

24                       Do you recall that?

13:25:06 25          A.       Yes.

1 Q. Have you ever seen the agreement?

2 A. Pardon me?

3 Q. Have you ever seen that agreement?

4 A. I don't believe so.

13:25:15 5 Q. Okay. Do you --

6 MR. STOFFELMAYR: That's all I have.

7 Thank you.

8 THE WITNESS: Yes.

9 MS. SULLIVAN: Nothing from Giant Eagle,

13:25:23 10 Your Honor.

11 THE COURT: Okay.

12 All right. Dr. Lembke, thank you very  
13 much.

14 You may be excused and we appreciate all  
13:25:30 15 the time you've spent here.

16 Have a good return.

17 THE WITNESS: Thank you.

18 MR. LANIER: Your Honor?

19 THE COURT: Yes.

13:25:37 20 MR. LANIER: Mark Lanier on behalf of  
21 plaintiff.

22 Our next witness is Dr. Carmen Catizone.

23 MR. WEINBERGER: Not a doctor.

24 MR. LANIER: I'm sorry. It's yes --

13:25:47 25 Mr. Car -- are you going to say something else?



1 MR. WEINBERGER: No, no.

2 MR. LANIER: Mr. Carmen Catizone, but it  
3 will take us about four or five minutes to set up for  
4 him, if the Court would indulge us.

13:25:55 5 THE COURT: Okay.

6 MR. LANIER: Thank you.

7 THE COURT: So we need to clean off the  
8 witness stand, also.

9 MR. LANIER: Oh, a juror may have a  
13:26:05 10 question, Your Honor.

11 A JUROR: We do.

12 THE COURT: All right. If you want to pass  
13 it to Mr. Pitts, please.

14 Well, we better get the witness back.

13:26:19 15 MR. LANIER: Yes, we just sent our fastest  
16 fellow.

17 THE COURT: Because I assume the question  
18 is for the witness.

19 A JUROR: Yes.

13:26:36 20 THE COURT: All right. According to my  
21 protocol, I'm going to show this to counsel.

22 If any counsel wants to ask this of this  
23 witness or any of it, that's fine.

24 If not, it may be more appropriate with  
13:26:49 25 other witnesses as I've indicated, but I appreciate the

1 question from the juror.

2 (Pause.)

3 MR. LANIER: Your Honor, I'm fine with  
4 whatever the defendants want to do.

13:27:13 5 MR. STOFFELMAYR: Judge, do you want us to  
6 use the side-bar phones or how can we --

7 THE COURT: Well, all right. Let's go on  
8 this.

9 MR. STOFFELMAYR: I want to explain to you.

13:27:26 10 THE COURT: All right.

11 (Proceedings at side-bar:)

12 MR. STOFFELMAYR: Judge, I don't think this  
13 is the right witness, as other witnesses are a hundred  
14 percent going to answer this question.

13:27:42 15 THE COURT: That's what I figured,  
16 Mr. Stoffelmayr.

17 MR. STOFFELMAYR: Yes. I just don't want  
18 the juror to think we are ignoring her question.

19 THE COURT: I'll cover that. So I gather  
13:27:55 20 no one else wants to ask this or anything like this of  
21 this witness.

22 Correct?

23 MR. STOFFELMAYR: Correct.

24 THE COURT: Okay.

13:27:59 25 (End of side-bar conference.)

1 THE COURT: All right.

2 Dr. Lembke, you may -- you may be excused.

3 And, ladies and gentlemen, again, the  
4 protocol is I show the questions to counsel, and if they  
13:28:12 5 think it's -- the right thing is to ask the question of  
6 this witness, fine.

7 Often the questions may be better answered  
8 from another witness, and they know that the juror has  
9 the question.

13:28:22 10 So thank you.

11 (Pause.)

12 MR. LANIER: And with that, Your Honor, may  
13 we go about setting up for this witness?

14 THE COURT: Yes.

13:29:39 15 (Pause.)

16 All right. Sir, if you could raise your  
17 right hand.

18 CARMEN CATIZONE,  
19 of lawful age, a witness called by the PLAINTIFFS,  
13:30:41 20 being first duly sworn, was examined

21 and testified as follows:

22 THE COURT: Thank you.

23 And you may take your mask off while  
24 testifying.

13:30:52 25 THE WITNESS: Thank you.

1 MR. LANIER: Okay, Your Honor, thank you.

2 We are ready.

3 THE COURT: Okay.

4 MR. LANIER: May it please the Court,

13:31:35 5 ladies and gentlemen.

6 DIRECT EXAMINATION OF CARMEN CATIZONE

7 BY MR. LANIER:

8 Q. Mr. Catizone, would you please introduce yourself  
9 to the jury.

13:31:49 10 A. Sure. I am Carmen Catizone.

11 Q. All right. Mr. Catizone, like everyone else, I not  
12 only have a roadmap for you, I tried to find your  
13 picture.

14 Is that you?

13:32:01 15 A. Yes, sir.

16 Q. All right. And I won't go into a lot of detail  
17 about your personal life, but am I allowed to at least  
18 ask you how old are you?

19 A. 65.

13:32:14 20 Q. And, sir, I've got a copy of your CV, your  
21 Curriculum Vitae, your resumé.

22 I've got it marked as demo 19. I'd like to  
23 put it up on the screen and ask you a couple of questions  
24 about it.

13:32:35 25 And make sure that we get your

1 qualifications out there in front of the jury. That's  
2 our first stop, your experience. Okay?

3 A. Yes, sir.

4 Q. Then after that, we're going to look at your focus  
13:32:48 5 in this case and then we'll finish with your findings.

6 Okay?

7 A. Yes, sir.

8 Q. And I expect you'll be on the stand probably with  
9 me throughout today, and then maybe tomorrow the  
13:32:58 10 cross-examination will start, depending on how fast we  
11 go.

12 All right?

13 A. Yes, sir.

14 Q. The biography that you've put here says you're  
13:33:09 15 currently a senior advisor to the National Association of  
16 Boards of Pharmacy.

17 Is that true, still true?

18 A. Yes, sir.

19 Q. What is the National Association of Boards of  
13:33:26 20 Pharmacy?

21 A. The National Association of Boards of Pharmacy, or  
22 NABP, is an organization of all of the state regulatory  
23 agencies in the United States and in Canada that regulate  
24 the practice of pharmacy and whose primary mission is the  
13:33:44 25 protection of the public health.

1                   No pharmacists, no pharmaceutical  
2                   companies, no pharmacies can be members of the NABP.  
3                   It's only the state regulatory agencies, and those  
4                   individuals are appointed by the Governors of the state  
13:33:58 5                   to serve on those Boards of Pharmacy.

6                   And NABP was founded in 1904.

7                   MR. WEINBERGER: Your Honor, can we turn up  
8                   his microphone just a bit?

9                   THE COURT: Okay.

13:34:10 10                  MR. LANIER: I'm having a little trouble  
11                  here, Your Honor.

12                  THE COURT: Good idea.

13                  A. I'll move the mic closer if that helps.

14                  MR. LANIER: I tend to shout so  
13:34:20 15                  people -- and that may influence how loud you are because  
16                  they set the system for me so I'll modulate down if you  
17                  can pull your microphone up.

18                  All right.

19                  A. Sure.

13:34:30 20                  BY MR. LANIER:

21                  Q. Thank you. To make sure that everybody got that,  
22                  the National Association of Boards of Pharmacies, you  
23                  said, is an organization of regulatory agencies.

24                  Now, are pharmacies members, full members,  
13:34:51 25                  of the National Association of Boards of Pharmacies?

1 A. No, sir. Only the states. And each state has one  
2 vote and one Board of Pharmacy member of NABP.

3 Q. What does that organization do?

4 A. It really has three primary focuses.

13:35:08 5 One is NABP develops the nationality  
6 licensure exam for pharmacists. So anyone who wants to  
7 be a pharmacist in the United States has to take the  
8 national examination that NABP develops.

9 Second, NABP manages the licenses of  
13:35:25 10 pharmacists when they want to transfer from  
11 state-to-state. So if a pharmacist wants to move from  
12 Illinois to Ohio, their application is processed through  
13 NABP, and NABP examines that application and makes sure  
14 that person doesn't have any disciplinary actions and  
13:35:41 15 makes sure that person has all the brokered credentials  
16 and lets the State of Ohio know that that person is ready  
17 for transfer.

18 The third function is NABP has the  
19 accreditation system where it accredits pharmacies,  
13:35:57 20 wholesale distributors, Internet sites to make sure they  
21 are in compliance with Allstate and federal laws and that  
22 they're not doing anything that would actually harm the  
23 public.

24 Q. All right. Sir, are you a pharmacist?

13:36:17 25 A. Yes, sir.

1 Q. How did you get to be a pharmacist?

2 A. I was always interested in the science and  
3 chemistry of medicine and I also wanted to do something  
4 where I could help people and interact with people and  
13:36:38 5 pharmacy was a profession that I thought fit well for me  
6 and something I would enjoy doing, and that's when I made  
7 the decision to try to become a pharmacist and then  
8 become a pharmacist.

9 Q. When I was talking to you -- by the way, you and I  
13:36:51 10 visited, via Zoom last night before you came in from out  
11 of town.

12 Is that right?

13 A. Yes, sir.

14 Q. And while we were talking via Zoom last night, you  
13:37:02 15 told me something about being the first in your family to  
16 go to college?

17 A. Yes. I was born and raised on the south side of  
18 Chicago and my parents were both blue collar. My dad  
19 finished sixth grade, grammar school. My mom finished  
13:37:21 20 high school and I've been working since I was 14. My  
21 first job was selling magazines door-to-door which that  
22 only lasted one day so I realized that probably wasn't  
23 the right career path for me, and I've been working the  
24 last 40 years as a pharmacist, and the first and only one  
13:37:35 25 in my family that's actually gone to college.



1 Q. Okay. And you don't talk much about your family.

2 I'm not asking you much about your family  
3 beyond just saying are you married, do you have family?

4 A. Yes. And yes.

13:37:51 5 And the reason I don't speak about my  
6 family as much as, one, is because of all the issues with  
7 identity theft and then some of the other things I did  
8 while I was at NABP and continue to do is I serve as an  
9 expert witness for the DEA and the U.S. Attorneys across  
13:38:08 10 the country, and on more than one occasion, my life has  
11 been threatened by individuals who have been convicted  
12 and sent to prison or prisoners have actually tried to  
13 contact my employer or my family to issue threats against  
14 me for the work I do with the DEA and U.S. Attorney's  
13:38:24 15 Offices.

16 Q. So out of safety concerns, we'll leave family  
17 background out of it.

18 A. Okay.

19 Q. But it's not because you're not proud of your  
13:38:31 20 family or something like that if we don't ask you?

21 A. I'm extremely proud particularly of my  
22 grandchildren, who I like more than my children, so.

23 Q. All the fun, none of the responsibility is what my  
24 wife and I say.

13:38:44 25 All right. Mr. Catizone, I want to go back

1 then and I want to look at your CV and look at your  
2 biography a little bit.

3 You are a founding partner of Catizone,  
4 Luce and another fellow, Menighan. How do you say it?

13:39:09 5 A. Yes, sir, Menighan.

6 Q. Menighan.

7 Would you tell the jury a little bit about  
8 your business entity there?

9 A. So when I retired from my Executive Director  
13:39:25 10 position December of 2020, I realized I needed to do  
11 something else and I wanted to stay somewhat involved.

12 But for my own safety, I knew if I was home  
13 all day long, that my wife would probably kill me. So I  
14 needed to do something else to take the time up, and I  
13:39:41 15 founded this company.

16 And what our company does is advises  
17 individuals, companies that are seeking to be licensed,  
18 that are trying to become more knowledgeable about  
19 pharmacy or trying to develop innovative ways to bring  
13:39:59 20 medicine to care of the patients.

21 Q. And is it in your capacity as a gentleman within  
22 this entity that we have retained you to come testify  
23 here?

24 A. Yes, sir.

13:40:11 25 Q. And we do reimburse you for your time at your

1 standard rates and all of that mess like I think all  
2 parties do with their experts?

3 A. Yes, sir.

13:40:24

4 Q. Before you founded this, you were with the National  
5 Association of the Boards of Pharmacy, that's the group  
6 that you were telling us about earlier, correct?

7 A. Yes, sir.

13:40:44

8 Q. And when we look at your job from May of -- from  
9 1988 to May of 2020, you were the Executive Director,  
10 CEO.

11 What does that mean?

13:40:58

12 A. I was responsible for the organization as a whole,  
13 and so I oversaw all the employees, some of the  
14 operations and then worked with the Board of Directors,  
15 which are elected officials from all the states.

16 When I first started in 1985, there were  
17 seven employees, and we had a budget of probably \$300,000  
18 and then when I retired in 2020, the organization had 150  
19 employees and a budget of \$40 million.

13:41:15

20 Q. Of 40, 4-0, million?

21 A. Yes, sir.

22 Q. And you oversaw that whole organization?

23 A. Yes, sir.

13:41:30

24 Q. And as such, when we start looking at issues of  
25 pharmacies and what they did or didn't do and did and

1 didn't know, were you actually the Executive Director/CEO  
2 during the 1990s, the early 2000s, and the 2000 teens?

13:41:52 3 A. Yes, sir. And because it was such a small staff, I  
4 was involved in all of the activities and I learned all  
5 the programs firsthand and worked very closely with the  
6 states on all of those issues.

7 Q. And then after you moved from being the CEO and  
8 Executive Director, you continued as a senior advisor,  
9 which is what you even do now two years later or a  
13:42:12 10 year-and-a-half later.

11 What is your responsibility as a senior  
12 advisor?

13 A. I'm supposed to advise the Executive Director and  
14 staff on issues, provide the history of what's happened.  
13:42:24 15 Many times I just go there because it's free coffee and a  
16 get a few hours peace and quiet, but otherwise, I provide  
17 advice to the staff that's there now.

18 Q. In that regard, you have practiced also as a  
19 registered pharmacist within Illinois?

13:42:44 20 A. Yes, sir.

21 Q. Is your license still valid?

22 A. Yes, sir.

23 Q. So you could, like, fill prescriptions for us?

24 A. Legally, yes, sir.

13:42:57 25 Q. Do you ever do any of that?

1 A. No. I just simply respond to questions from my  
2 family and friends about their medications and different  
3 things but have not practiced, sir.

4 Q. When was the last time you filled a prescription?

13:43:12 5 A. Probably at around 2000.

6 Q. Okay. As we continue to look, there are a host of  
7 presentations that you have made. They go on for pages  
8 within your CV.

9 Is that fair to say?

13:43:32 10 A. Yes, sir.

11 Q. And these presentations, you keep track of them, I  
12 assume?

13 A. Yes, sir.

14 Q. And are any of them relevant to the issues that we  
13:43:48 15 have asked you to look at in our case?

16 A. In some regards, some more than others.

17 All of those are relevant to the  
18 proceedings and discussions at this trial.

19 Q. So the issues where you look at standard of care, a  
13:44:06 20 regulatory approach, is that important?

21 A. Yes, sir.

22 Q. Why?

23 A. Standard of care is one of the principles that I  
24 was asked to look at, and my expertise in, to discuss  
13:44:18 25 defendants' behavior and what was happening with

1 prescriptions and activities in Lake and Trumbull County.

2 Q. Understanding corresponding responsibility and red  
3 flags in pharmacy cases, a presentation at the Drug  
4 Enforcement Administration's federal pharmaceutical drug  
13:44:36 5 investigation and prosecution training program in Texas,  
6 2016, is that relevant?

7 A. Yes, it is, sir.

8 Q. In what way?

9 A. Again, corresponding responsibility is one of the  
13:44:48 10 key principles under discussion in this trial and one of  
11 the key responsibilities of pharmacists and pharmacies.

12 Q. And so when you did that presentation, were you  
13 doing it at the request of the DEA or how did that come  
14 about, if you remember?

13:45:06 15 A. Yes.

16 The DEA requested that, because one of the  
17 other responsibilities I had or activities I engaged in  
18 is I was an adjunct faculty for the DEA and I taught DEA  
19 agents at Quantico red flags, corresponding  
13:45:23 20 responsibility, and what the Boards of Pharmacy were and  
21 what their responsibilities were.

22 Q. Wait. Quantico?

23 A. Yes, sir.

24 Q. That's like FBI headquarters?

13:45:31 25 A. Yes, sir.

1 Q. And you taught there?

2 A. Yes, sir.

3 Q. In that regard, also, you have spoken, I see, in  
4 2015 at the National Heroin Task Force Subcommittee  
13:45:49 5 meeting in D.C.

6 Is that relevant in this case?

7 A. Yes, sir.

8 Q. Why?

9 A. What happened with the prescription drug abuse and  
13:45:58 10 opioids, people would substitute opioids for heroin.  
11 When it became difficult or too expensive to obtain  
12 opioids, they would switch to heroin. So there was a lot  
13 of interplay and a lot of interactions between opioid  
14 abuse and heroin abuse as well.

13:46:15 15 Q. You gave a presentation on prescription opioid  
16 abuse, misuse, and diversion back in 2014 in Dallas,  
17 Texas.

18 Is that correct?

19 A. Yes, sir.

13:46:27 20 Q. Is that relevant to your opinions in this case?

21 A. Yes, sir.

22 Q. Why?

23 A. Again, for many of the same reasons I mentioned,  
24 the fact that opioids are abused and the problems that  
13:46:38 25 they cause and the impact it had on people's lives.

1 My expertise in how pharmacies, pharmacists  
2 and Boards of Pharmacy were managing those issues was the  
3 focus of my presentation and relevance to the proceedings  
4 we're involved in.

13:46:54 5 Q. Sir, is it fair to say that you've been involved in  
6 issues that you'll be testifying about for decades?

7 A. Yes, sir.

8 Q. Now, before I leave your CV, you've got another  
9 section entitled "Expert testimony."

13:47:12 10 Is that fair?

11 A. Yes, sir.

12 Q. And your first section is U.S. Attorney.

13 Can you explain what you mean by this list  
14 under that?

13:47:20 15 A. As I mentioned earlier, I do expert work for the  
16 U.S. Attorney's Offices across the country on various  
17 cases that they have involving pharmacy regulation and  
18 pharmacy practice.

19 Q. And you've actually gotten at least one death  
13:47:37 20 threat, you were telling me about, because of this?

21 A. Yes, sir.

22 Q. I think it's important people understand what  
23 you've done.

24 So would you explain what happened to the  
13:47:46 25 detail you're allowed to or comfortable with?



1 A. Sure.

2 There was a case in Minnesota in which an  
3 individual who was a high school dropout but was very  
4 intelligent in terms of computer savviness actually  
13:48:00 5 constructed a number of illegal Internet websites and was  
6 selling opioids and other products on the Internet  
7 through these websites, probably amassed a fortune of  
8 between 12 and \$21 million.

9 I was asked to testify against the  
13:48:15 10 individual based upon my knowledge and experience about  
11 what's illegal Internet pharmacy, what's safe practices,  
12 what's corresponding responsibility.

13 As I went up to testify, the U.S. Attorneys  
14 Marshals Service had to move me from hotel to hotel  
13:48:31 15 because while the person was in jail, they tried to buy  
16 someone to kill the witnesses before we could testify.  
17 And so I did testify at the trial and then the individual  
18 received an additional sentence for threatening witnesses  
19 in that case.

13:48:47 20 Q. You've done this, it looks like, if I'm looking at  
21 the time period, for at least the last 15 years.

22 Is that right?

23 A. Yes, sir.

24 Q. You then have another section of your resumé where  
13:49:03 25 you've provided expert testimony for the U.S. Department

1 of Justice Drug Enforcement Administration.

2 Can you tell us about that, please?

3 A. I work very closely with the DEA. The DEA will ask  
4 me to opine or give opinions on various matters or  
13:49:20 5 testify in cases. So again, it's very similar to the  
6 work with the U.S. Attorneys.

7 They'll have a pharmacist, pharmacy or  
8 individual that owns a pharmacy that they feel is not  
9 meeting the responsibilities, and I'm asked to assist and  
13:49:33 10 testify as to what those responsibilities would be and  
11 whether or not they're practicing pharmacy practice as  
12 they should.

13 Q. All right.

14 In addition to that, you've testified for a  
13:49:42 15 number of states?

16 Can you tell us about that, please?

17 A. In my role with NABP, I often was asked to testify  
18 on issues before the states to give opinions as to what  
19 the national standard might be or what the standards of  
13:49:56 20 care would be or what the best regulatory practice would  
21 be.

22 And so I've made presentations to all the  
23 states, many of the state legislatures, with the  
24 exception of Alaska. I've never testified in Alaska.

13:50:10 25 Q. So when you testify in this case, Judge willing,

1 when you testify in this case about standards of care, is  
2 that something that states have used you to talk about in  
3 different contexts, perhaps, but at least standard of  
4 care of pharmacists?

13:50:25 5 A. Yes, sir.

6 Q. Okay.

7 Next, I notice you've got a couple of pages  
8 of congressional testimony.

9 Can you tell the jury a little bit about  
10 your congressional testimony?

11 A. Again, in my role at NABP, we would be invited by  
12 various Senate or House committees or subcommittees to  
13 talk about pharmacy practice, pharmacy regulation,  
14 opioids, Internet pharmacies, corresponding  
13:50:51 15 responsibility, because Congress and Senate was  
16 interested as to what was the picture, what was the  
17 landscape, from a national perspective, as to what the  
18 states were doing and what was happening in the states  
19 and what NABP was doing to recommend to the states what  
13:51:06 20 practices to follow, what regulations that they may want  
21 to implement.

22 Q. All right. You've also got a section in your CV  
23 where you've put in some chapters in books and you've  
24 published some articles.

13:51:18 25 Fair to say?

1 A. Yes, sir.

2 Q. Do you like writing books and articles?

3 A. It's interesting to do.

4 I'm not sure I would classify it as fun,  
13:51:31 5 but it's interesting.

6 Q. Okay. Then you've got a set of media -- well,  
7 actually pages of media appearances.

8 And finally, your last page you saved until  
9 last, your awards and honors, right?

13:51:49 10 A. Yes, sir.

11 Q. And it looks like you've gotten a number of awards  
12 from University of Illinois; Alumnus of the Year to  
13 Federation of State Medical Boards Award of Merit, a  
14 special citation from the Commissioner of the FDA on two  
13:52:07 15 occasions.

16 Which one are you most proud of?

17 A. The one I'm most proud of is that I've helped a  
18 number of people at NABP actually realize their potential  
19 and believe in themselves.

13:52:21 20 Those awards are very gratifying, but I  
21 haven't been the one that's done the work behind many of  
22 those awards so I appreciate being recognized but there's  
23 a lot of other people that helped me get those awards.

24 Q. You've got affiliations down here as well.

13:52:38 25 We've already discussed you as a registered

1 pharmacist in Illinois.

2 But are you a member of the Federation of  
3 Association of Regulatory Boards?

4 A. Not any longer because that organization doesn't  
13:52:53 5 exist anymore, sir.

6 Q. All right. Were you a member of the American  
7 Foundation For Pharmaceutical Education?

8 A. While it existed, yes, sir.

9 Q. A member of the American Institute of the History  
13:53:06 10 of Pharmacy?

11 A. Yes, sir.

12 Q. American Pharmacists Association?

13 A. Yes, sir.

14 Q. American Society For Pharmacy Law?

13:53:13 15 A. Yes, sir.

16 Q. American Society of Health System Pharmacists?

17 A. No longer, but I was.

18 Q. Okay. President of the National Drug Trade  
19 Conference at some point in 1995?

13:53:28 20 A. Yes, sir.

21 Q. Sir, with all of your experience and all of your  
22 special knowledge that you come here as an expert with,  
23 I'm going to be asking you a number of questions and  
24 opinions.

13:53:44 25 Are you with me?

1 A. Yes, sir.

2 Q. And when I ask you those opinions, I would ask you  
3 to only answer if they're within the realm of reasonable  
4 probability for your field of expertise.

13:53:59 5 Okay?

6 A. Yes, sir.

7 Q. Thank you.

8 With that, we're through the first stop,  
9 experience. And I'd like to talk at the second stop  
13:54:09 10 about your focus.

11 All right?

12 What have we asked you to do in this case?

13 A. I've been asked to review information and data from  
14 the defendants in the class and make an opinion or  
13:54:31 15 provide opinion as to whether or not the defendants were  
16 actually complying with the corresponding responsibility,  
17 conducting due diligence regarding red flags, and whether  
18 or not they were able to and did document what they did  
19 to identify and resolve red flags so they could dispense  
13:54:51 20 prescriptions safely.

21 Q. And have you had a chance to do the necessary  
22 homework to offer your opinions?

23 A. Yes, sir.

24 Q. Are you competent to testify about red flags?

13:55:12 25 A. Based on my experience and all the things I've done

1 in the past 450 years, I believe so, sir.

2 Q. And what is your definition as a pharmacist and an  
3 ex-CEO of the national Boards of Pharmacy, what is your  
4 definition of a red flag in terms of opioid --

13:55:32 5 A. Sure.

6 Q. -- and this case?

7 A. And probably the simplest of definitions, it's a  
8 warning sign, something is not right, something requires  
9 additional review.

13:55:44 10 And more of the pharmacy jargon, pharmacy  
11 language, red flags. It's a number of factors that have  
12 been identified by the DEA, by the state Boards of  
13 Pharmacy, any court cases, that alert the pharmacists  
14 that there's a problem here with this prescription,  
13:56:02 15 either that can harm the patient, or it's signalling if  
16 there could be possible diversion or something else going  
17 on that causes that pharmacist to pause and conduct due  
18 diligence to make sure that that red flag gets resolved.

19 Q. And that's my next general question, and we'll get  
13:56:23 20 into lots of specifics with your findings as we walk  
21 through your opinions, but when a red flag or more red  
22 flags, plural, accompany a customer and a prescription,  
23 is it an obligation of the pharmacist to resolve that red  
24 flag before dispensing the prescription?

13:56:53 25 A. Yes.

1 Q. Is that an important responsibility?

2 A. It's a -- it's a critical responsibility, and I can  
3 explain it both in the context of a red flag and the  
4 context of just a regular prescription.

13:57:09 5 If you had a prescription and there was  
6 something wrong with that prescription, a red flag, maybe  
7 the dose was too high or maybe it was a medication that  
8 you shouldn't be taking or your child shouldn't be  
9 taking, if the pharmacist doesn't resolve that warning  
13:57:22 10 sign before dispensing the medication, you or your child  
11 or a family member could be significantly injured by that  
12 medicine.

13 The same concept applies with red flags.  
14 If there's a red flag that signals that there may be an  
13:57:35 15 issue with this prescription, patient harm or diversion,  
16 the pharmacist has to resolve that before they dispense  
17 it. They simply can't say, "Here's the prescription. I  
18 notice there was something wrong with it, good luck."  
19 That's just not pharmacy practice and that's not in the  
13:57:52 20 best interests of the patient.

21 Q. Okay. In addition to red flags, when you said did  
22 defendants comply with their obligations -- by the way,  
23 before I say, "In addition," did we ask you to  
24 deliberately focus on the specific pharmacies within Lake  
13:58:13 25 and Trumbull County?



1 A. I focused on the prescriptions from Lake and  
2 Trumbull County that came from those pharmacies.

3 Q. And you actually -- did you actually eyeball these  
4 prescriptions?

13:58:28 5 A. The sample set that was provided to me, which was  
6 about 2,000 prescriptions per defendant, I actually  
7 looked at every single one of those almost 8,000  
8 prescriptions.

9 Q. And those were the ones that, through Court order,  
13:58:44 10 the defendants gave to us.

11 We didn't choose that sample, we being the  
12 lawyers for Lake and Trumbull. You understand that?

13 A. That was my understanding, sir, but that was  
14 between the lawyers.

13:58:54 15 Q. So -- right.

16 So the four defendants in this case were  
17 each to tender 2,000 to us as lawyers, and we gave them  
18 to you, and did you look at each one of those?

19 A. Yes, sir.

13:59:04 20 Q. And those were specifically from Lake and Trumbull  
21 Counties?

22 A. Yes, sir.

23 Q. So are you able to testify about whether or not the  
24 pharmacists exercised good pharmacy practice when it came  
13:59:25 25 to dispensing on those 8,000 prescriptions?

1 A. Yes, sir.

2 Q. And are you prepared to do that when we reach that  
3 point in your testimony?

4 A. Yes, sir.

13:59:39 5 Q. I know that there are other areas that you're going  
6 to testify about. I'm going to come back to those in a  
7 minute.

8 But I want to pause first and ask you some  
9 generic questions about this, and the first one that I  
13:59:52 10 would ask you is this:

11 What are the roles of a pharmacy and a  
12 pharmacist?

13 Is there a distinction in your mind?

14 A. No, sir. The two work in tandem and share  
14:00:10 15 responsibilities.

16 So --

17 Q. All right. Explain, please.

18 A. So the pharmacist is the final gatekeeper for a  
19 person receiving the medication.

14:00:19 20 Doctors have some knowledge about  
21 medications, but the pharmacist spends their entire  
22 professional career and education learning about  
23 medications and learning how patients can best use those  
24 medications.

14:00:31 25 So the pharmacist has to take

1 responsibility for that patient's medications and make  
2 sure the patient receives the right medication.

3 The pharmacy is to support the pharmacist  
4 in that regard, provide them with the tools that are  
14:00:44 5 necessary, provide them with the staffing that's  
6 necessary, provide them with information and information  
7 systems that allow the pharmacists to meet that  
8 responsibility and actually take care of the patients and  
9 serve as that last defense.

14:01:04 10 Q. Tools, staff, and information systems.

11 Have you looked at the tools, staff and  
12 information systems of the four pharmacy defendants in  
13 this case?

14 A. Yes, sir.

14:01:22 15 Q. And are you prepared to testify about whether or  
16 not the pharmacy stepped up and did what you believe  
17 reasonable practice should have done, timely, on these  
18 four factors?

19 A. Yes, sir.

14:01:42 20 Q. And if the pharmacy fails to support with tools and  
21 staff and information systems, will it affect the ability  
22 of the pharmacist as a final gatekeeper?

23 A. It will have a very significant impact on the  
24 pharmacist.

14:01:58 25 Q. Why is that true?

1 A. The pharmacist has a very important responsibility  
2 here. If they dispense the wrong medication, somebody  
3 could get hurt or killed.

4 As a pharmacist, there have been many  
14:02:13 5 sleepless nights where I've gone home and worried about  
6 that prescription and wondered if I gave the patient the  
7 wrong prescription and the first thing I did was run back  
8 in that pharmacy that next morning and triple and double  
9 checked to make sure I dispensed the right medication.

14:02:29 10 With that responsibility, you have to focus  
11 on that patient and you have to focus on that  
12 prescription. If you are distracted or don't have enough  
13 staff, if you've got people at both windows, if you've  
14 got the drive-up going, if you've got people banging  
14:02:42 15 their keys asking where is my prescription, if you can't  
16 get in touch with a doctor, if you don't have any  
17 information on that patient or any place to document  
18 what's going on, that takes you away from that primary  
19 job of protecting that patient and making sure they get  
14:02:56 20 the right medication, which translates into harm for the  
21 patient.

22 And that should never happen in any  
23 pharmacy.

24 Q. Is that why it's necessary for the pharmacy to  
14:03:04 25 support with tools, enough staff, and with information

1 systems?

2 A. Yes, sir.

3 Q. All right.

4 Now, I have said in opening statement that  
14:03:20 5 a pharmacist should not be viewed as a gum ball machine  
6 where you just show your prescription, put in the money  
7 and out spits the medicine; that a pharmacist should be  
8 much more than that.

9 Do you agree with that?

14:03:34 10 A. Yes, sir.

11 Q. And so I ask you this, is a pharmacist just  
12 supposed to fill prescriptions, no questions asked?

13 A. No, sir.

14 Q. Explain, please.

14:03:46 15 A. Sure.

16 Many times the doctors don't understand the  
17 medications or don't understand some of the other  
18 conditions that the patient has.

19 Many times patients visit with their doctor  
14:04:00 20 and it lasts anywhere between 23 and 36 seconds. So  
21 there's not much time for the patient to interact with  
22 the doctor. They rely on their nurses or other office  
23 staff to do a lot of the work and for the doctor to come  
24 in and make the final decisions.

14:04:14 25 The pharmacist has to take into account

1 everything about that patient, the other medications  
2 they're taking, their allergies and make the right  
3 decision to dispense that medication or not. The  
4 pharmacist has all that going on behind the scenes, and I  
14:04:29 5 understand that for most patients, it's very difficult to  
6 get an understanding of that because people say all you  
7 have to do is take the pills out of the bottle, put them  
8 in the bottle and give them to me, what could take so  
9 long, why am I waiting for my prescription, but the  
14:04:43 10 pharmacist has all those other responsibilities to make  
11 sure that the patient receives the right medication and  
12 to double-check the doctor and others that may be  
13 involved with that patient's care.

14 And that takes time and that takes focus.

14:04:55 15 Q. I've tried to jot a note of what you said, because  
16 of several reasons, but one is I'm going to come back and  
17 ask you how you know this to be true.

18 Many times, doctors don't understand, I  
19 think you were talking about the way drugs interact or  
14:05:09 20 something.

21 A. Yes, sir.

22 Q. So I'll just say drug interaction.

23 But in addition to that, you said many  
24 times doctors visit between 23 and 36 seconds with a  
14:05:24 25 patient.

1                   Where did you get that from?

2           A.       There's been studies published that have written  
3           about that and patient complaints about the lack of time  
4           with their doctors. The newest complaints have been that  
14:05:36 5           their doctor spends more time looking at the computer or  
6           punching things into their iPad than they do interacting  
7           with the patient.

8           Q.       Why is that relevant to you as a pharmacist?

9           A.       Because if a doctor doesn't have the knowledge of  
14:05:53 10           drugs that the pharmacist has, and if the doctor doesn't  
11           have the time for whatever reason to talk to the patient  
12           about their medicines, about their allergies, about other  
13           medications they're taking or doesn't even know what  
14           other medications the patient is taking, that pharmacist  
14:06:09 15           is that last stop, the last person that could actually  
16           help that person and make sure the patient's not harmed.

17          Q.       All right. So your focus in this case, have you  
18           been able to look at the metrics associated with staffing  
19           as well as tools and information systems?

14:06:40 20          A.       Yes.

21                   There were some analyses that were run  
22           based on the data, and I looked at the aggregate data  
23           that was analyzed by other witnesses or other experts.

24          Q.       All right. And in this regard, what I need to do  
14:06:53 25           is make sure that the record is clear. His Honor knows

1 this stuff, but the jury doesn't, and we need to make  
2 sure everybody understands what forms the basis of your  
3 opinions. Okay?

4 First of all, would you please tell us what  
14:07:08 5 is metrics when it comes to the areas in which you'll be  
6 testifying today?

7 A. My understanding is if the metrics are referring to  
8 pharmacists' performance, then those metrics were how  
9 long it takes for a pharmacist to dispense a prescription  
14:07:29 10 and how long a patient is waiting for that prescription,  
11 how many prescriptions the pharmacy dispensed, and what  
12 the bonus programs were in place for pharmacists to  
13 dispense more prescriptions and to meet certain quotas or  
14 goals that the corporations had set for pharmacists.

14:07:51 15 Q. So were there times with the four -- each of the  
16 four defendants in this case, were there times where  
17 bonuses were based upon the number of scripts they were  
18 able to dispense?

19 A. Yes.

14:08:12 20 Q. In part, at least?

21 A. Yes, sir.

22 Q. Is that a good thing?

23 A. If -- if it impacts the pharmacist's ability to  
24 review those prescriptions and make sure the patient's  
14:08:28 25 getting the right medication, the answer is no, it's a



1 bad thing, it's a really bad thing.

2 If the pharmacist feels that they're under  
3 pressure to fill prescriptions when they shouldn't fill  
4 prescriptions, because it's going to impact them  
14:08:42 5 financially, that's another very bad thing.

6 The pharmacist has to be the patient's  
7 advocate and be objective and do the right thing for the  
8 patient and not be financially incentivized to do things  
9 differently or to meet certain quotas of speed or metrics  
14:08:59 10 that could endanger the patient.

11 Q. Over time, did the defendants -- I'm jumping ahead.

12 Do you know whether, in the earlier stages  
13 of this epidemic, the four defendants were bonusing their  
14 pharmacists based upon the number of prescriptions  
14:09:22 15 filled, including opiates?

16 A. In some of the -- in the information I reviewed,  
17 there was incentives that included some of the various  
18 opioids that are the problem and have caused significant  
19 harm and death in the opioid epidemic.

14:09:39 20 Q. Why is that, when it comes to opiates, a dangerous  
21 situation?

22 A. Just by their very nature, opiates are extremely  
23 dangerous drugs.

24 Some -- a person can take one dose of an  
14:09:54 25 opioid and be addicted to that opioid.

1                   So there's a very, very strong concern for  
2 pharmacists to make sure the right patient gets the right  
3 medication, particularly with opioids.

4                   If you have a financial program that  
14:10:08 5 includes opioids so that the more you dispense, the more  
6 money you make, that's contrary to what pharmacies should  
7 be doing with opioids.

8                   They should be looking at these very  
9 carefully and not be trying to push opioids to meet a  
14:10:21 10 financial quota or to increase their bonus.

11 Q. Did you find any of the pharmacies that you looked  
12 at in this case, Walgreen's, Walmart, CVS, Giant Eagle,  
13 did you find that any of them had a bonus program in  
14 place to recognize when their pharmacists said no to an  
14:10:46 15 opioid prescription because the pharmacist believed that  
16 it was an improper prescription or should not be filled?

17 A. In the materials that I reviewed, I did not see  
18 that at all, sir.

19 Q. Would that be a good policy to have in place?

14:11:01 20 A. From a patient's safety and regulatory, I would say  
21 yes.

22 Q. All right. Now, with that area of metrics in the  
23 way, have you looked both at the broad United States  
24 policies -- let me make Texas a little bigger -- the  
14:11:28 25 broad United States policies as well as the policies of

1 Ohio?

2 A. Yes, sir.

3 Q. And in addition to looking at the broad United  
4 States policies with these pharmacies, and the policies  
14:11:42 5 in Ohio, did you examine the actual pharmacies from Lake  
6 and Trumbull Counties?

7 A. Yes, sir.

8 Q. And you're prepared to testify about those opinions  
9 today and tomorrow?

14:11:59 10 A. Yes, sir.

11 Q. All right. Then with that background on your  
12 focus, let's start going through your findings.

13 You've issued a lot of opinions in this  
14 case, haven't you?

14:12:12 15 A. Yes, sir.

16 Q. I'm not faulting you for it. I'm just saying we're  
17 going to be here for a while, aren't we?

18 A. I have a flight to catch tomorrow so.

19 Q. We'll do the best we can, sir.

14:12:26 20 Excuse me, Your Honor.

21 Opinion number one. "The practice of  
22 pharmacy is governed by well-defined laws and  
23 regulations, both at the national and state-wide levels."

24 Is that your opinion?

14:12:47 25 A. Yes, sir.

1 Q. Would you explain that opinion to us.

2 A. It's the finding is pretty self-evident: That  
3 pharmacies are very black and white, regulatory group.  
4 In fact, pharmacists will always say the most regulated  
14:13:06 5 profession so there are very specific federal laws, very  
6 specific state laws that define what the scope of  
7 practice is for pharmacists and what their  
8 responsibilities are.

9 And the federal and national laws dovetail  
14:13:19 10 and complement the state laws.

11 Q. Would you explain to us the system that exists in  
12 opioids? And by that, I mean a closed system.

13 I expressed and talked to the jury about it  
14 in opening, but that wasn't evidence and I need evidence  
14:13:38 15 in the record about what the closed system of regulation  
16 is for opioids.

17 Could you explain that, please?

18 A. Sure.

19 The federal laws, the Controlled Substances  
14:13:49 20 Act and what the DEA does is to ensure that, as the  
21 attorney just said, it's a closed system of controlled  
22 substance, which means that that drug, that opioid, can  
23 be traced from the manufacturer to the patient throughout  
24 that system.

14:14:05 25 So if it goes from a manufacturer to a

1 wholesaler to a pharmacy to a patient or to a doctor to a  
2 patient, each one of those registrants is responsible for  
3 that produce and making sure that that product stays  
4 within that closed system and that those prescriptions  
14:14:24 5 and that distribution is all for legal purposes.

6 The DEA and the federal laws do not  
7 function as a national medical board or a national  
8 pharmacy board. They don't dictate practice, what  
9 pharmacists or doctors should actually do in terms of  
14:14:43 10 standards of care. They support what the states say, and  
11 the states then define what a pharmacist should do, what  
12 their scope of practice is, and what they're responsible  
13 for in the pharmacies.

14 Q. All right. So in this idea of a closed system,  
14:15:00 15 I've drawn a closed loop.

16 Are you able to see that?

17 A. It looks like a trailer, but, yes, I see that, sir.

18 (Laughter.)

19 Q. Well, I won't be your Pictionary partner.

14:15:17 20 And then I've got a manufacturer -- that's  
21 a smoke stack. That's manufacturers, okay?

22 A. Okay.

23 Q. Are they in the closed system?

24 A. Yes, sir.

14:15:26 25 Q. This represents -- I should have done the person in

1 the middle in a different color -- this represents the  
2 distributors, the people in the middle who buy from the  
3 manufacturers and get to the pharmacies.

4 Are they in the system?

14:15:38 5 A. Yes.

6 Q. Closed system?

7 A. Yes, sir.

8 Q. And then the pharmacies, are they in the closed  
9 system?

14:15:43 10 A. Yes, sir.

11 Q. And if you're going to be -- that's a stethoscope  
12 up there.

13 If you're going to be a doctor and write  
14 prescriptions for opiates, do you have to be registered  
15 within the closed system?

14:15:55 16 A. Doctors are registrants, yes.

17 Q. All right. And then the prescription goes to the  
18 patients?

19 A. Correct.

14:16:05 20 Q. Now, you used a term just now, you said doctors are  
21 registrants.

22 Everyone inside the closed system, are they  
23 considered a registrant?

24 A. Yes, sir.

14:16:16 25 Q. And what is a registrant?

1 What does that mean?

2 A. Registrants are defined in the Controlled  
3 Substances Act at the federal law, and they are charged  
4 with certain responsibilities to maintain that closed  
14:16:31 5 system.

6 Q. Do they have to register with the Federal  
7 Government to process and deal with these opiate drugs?

8 A. Yes, they do.

9 Q. Now in addition to this federal system, which I've  
14:16:53 10 done as a closed system, where does the state regulations  
11 apply?

12 A. Before we leave the federal system, sir, there was  
13 something I left out, if I can mention.

14 Q. Okay.

14:17:06 15 A. Pharmacists are not registrants under the DEA.

16 So the pharmacist is a part of the  
17 pharmacy's registration and, therefore, that's why the  
18 pharmacy and pharmacist are treated equally in terms of  
19 responsibility by the DEA.

14:17:25 20 Q. All right. So a registrant, someone who is  
21 registered with the DEA, you said that is not a  
22 pharmacist?

23 A. Correct, sir.

24 Q. But it is the pharmacy?

14:17:45 25 A. Yes, sir.

1 Q. And so can a pharmacist, on their own,  
2 just -- could a pharmacist go to a middle person and buy  
3 some opioids and then turn around and just sell them as a  
4 pharmacist?

14:18:10 5 Would that be legal?

6 A. No, sir.

7 Q. Now, with that information added, the pharmacy here  
8 is -- we'll keep it in a building as a pharmacy -- is a  
9 registrant.

14:18:33 10 Tell me and the jury, please, explain to  
11 them how the state regulations fit into this process.

12 A. Sure.

13 The state regulations that, as I mentioned  
14 earlier, complement the federal. So all the state  
14:18:51 15 practice acts deal with the security of those controlled  
16 substances, the security of the pharmacy.

17 It restricts all access to the pharmacy --  
18 to the pharmacy that require certain alarms --

19 Q. Yeah. Slow up, please.

14:19:01 20 COURT REPORTER: Sir --

21 THE COURT: If you could just slow down a  
22 bit and speak into the mic. Thanks.

23 THE WITNESS: My apologies.

24 BY MR. LANIER:

14:19:08 25 Q. All right. Let's start all over.



1                   The state -- the Court Reporter got you up  
2                   to the point the state regulations, as I mentioned  
3                   earlier, complement the federal so all the state practice  
4                   acts deal with the security of those controlled  
14:19:24 5                   substances.

6                   Why don't you take up from there?

7                   A.       Sure.

8                   So again, to make sure that system remains  
9                   closed, the state regulations will deal with some very  
14:19:33 10                  specific items.

11                  What type of security systems need to be in  
12                  place at a pharmacy, what are backup systems in case the  
13                  power goes out or there's a flood or hurricane, and then  
14                  they also deal with some of the recordkeeping that may be  
14:19:50 15                  mentioned at the federal level but that the state also  
16                  wants in place.

17                  They will then also talk to the pharmacist  
18                  about what their responsibilities are and what the  
19                  standard of care is for dispensing controlled substances,  
14:19:59 20                  particularly opioids.

21                  It will talk to the pharmacist about  
22                  conducting a drug utilization review, which is some of  
23                  the things I talked about --

24                  Q.       Wait. You got to slow up.

14:20:08 25                  THE COURT: Yeah.

1 Q. I'm trying to keep up and we have some jurors who  
2 may be taking notes.

3 A. I'm sorry.

4 Q. Some don't. No, no, that's okay. I'm just like my  
14:20:16 5 hand is cramping.

6 Pharmacy standard of care, I got to that  
7 point. So we got security systems, backup systems,  
8 recordkeeping, pharmacy standard of care.

9 What next?

14:20:29 10 A. I started talking faster than I was thinking so  
11 I've lost my place.

12 Q. All right. Let me give it to you.

13 You said it will talk to the pharmacists  
14 about conducting a drug utilization review.

14:20:41 15 A. Right.

16 So the state laws will deal with what the  
17 pharmacists as a practitioner is responsible for.

18 Reviewing that patient's medication,  
19 reviewing the patient themselves, and then making sure  
14:20:52 20 that medication's appropriate.

21 In terms of the controlled substances, it  
22 will put further restrictions in some cases on the  
23 pharmacist in terms of inventories, recordkeeping,  
24 special prescription blanks that may be needed to  
14:21:09 25 transmit those, and that both the federal and the state

1 systems require that the pharmacists document what's  
2 happened with that prescription, with that patient.

3 And that's critical for a number of  
4 reasons.

14:21:26 5 Q. All right. Hold on. I want to write that onto a  
6 separate sheet because I'm running out of room and I'm  
7 going to need that with you later.

8 So you say documentation is required in  
9 different places. Is that where you were going?

14:21:41 10 A. Yes, sir.

11 Q. All right. So on the requirement of documentation,  
12 why is that critical?

13 A. It's critical for a number of reasons.

14 One, if another pharmacist treats that  
14:22:01 15 patient who's not familiar with that patient and doesn't  
16 know what the prior pharmacist did, that's dangerous to  
17 the patient.

18 Q. So you might have a patient that comes in, you've  
19 got Pharmacist A and now she dispenses a drug but has  
14:22:26 20 concerns and does this, that or the other, and then the  
21 next week that person comes in and Pharmacist B is  
22 working and he decides, he, Pharmacist B, decides  
23 something different.

24 Is it important that another pharmacist  
14:22:40 25 have access to the documentation of the first pharmacist?

1 A. Yes.

2 Q. All right. Why else is it critical?

3 A. It's critical so that when a Board of Pharmacy does  
4 an inspection or when the DEA conducts an inspection,  
14:22:59 5 that they realize that those patients were being treated  
6 legitimately and the red flags were resolved and that  
7 there wasn't a problem with the system not being closed  
8 and diversion occurring.

9 So it's another means of documenting what  
14:23:14 10 was happening and that the right things were being done  
11 and that patients have access to medications.

12 Q. Now, does the -- well, I'll ask that of the DEA  
13 gentleman.

14 All right. Any other reasons documentation  
14:23:29 15 is critical?

16 A. One of the other requirements and part of  
17 consideration is that if there is diversion or there is  
18 theft, so it could be anything from an employee that's  
19 stealing medications, what I've seen in hospitals  
14:23:45 20 sometimes is that the people diverting the medications  
21 will not administer the full dose to the patient or  
22 they'll take the dose and then write in the patient's  
23 chart that they gave the dose and there's no other  
24 documentation and then the patient's pain isn't managed  
14:24:03 25 correctly.

1                   So having the documentation of diversion,  
2                   having documentation of what's happening, is critical not  
3                   only for the patient's care but then to get those people  
4                   out of the system and to stop that diversion from  
14:24:16 5                   continuing.

6           Q.       So does documentation help in the situation of  
7                   theft and diversion?

8                   And by "Help," I mean it helps minimize it?

9           A.       It's a very important tool to identify, to stop it  
14:24:32 10                  in most cases, and to send the message to others that  
11                  this pharmacy's doing everything it can to prevent that  
12                  diversion so it discourages other people from trying to  
13                  divert drugs from there as well.

14          Q.       All right. Any other reason you can think of why  
14:24:48 15                  documentation is critical?

16          A.       I think those are the primary, sir.

17          Q.       Okay. And the requirement of documentation, does  
18                  the statute or regulations that you're familiar with  
19                  spell out exactly what a pharmacist is supposed to do, or  
14:25:06 20                  does it leave that up to the company's policies and the  
21                  pharmacists to do it?

22          A.       The laws work -- yeah -- in the same way, whether  
23                  it's a controlled substance or whether the requirements  
24                  are for something else.

14:25:19 25                   A law will say this is what the

1 requirements are in a broad sense, so in regard to  
2 documentation and opioid, what the law specifically says  
3 is the pharmacist must comply with all good practices or  
4 practices of standards.

14:25:37 5 And then it defers to or counts on the  
6 state to define what those specifics would be,  
7 particularly with documentation.

8 Now, when questions arise or when people  
9 say the law is way too ambiguous or it's not specific  
14:25:55 10 enough, then you have other court cases or other guidance  
11 documents that are issued either by the federal agencies,  
12 DEA, or by the state Boards of Pharmacy that provide more  
13 specificity to those laws, but the requirement doesn't  
14 change, what the standard of care is doesn't change.

14:26:14 15 It may give more direction but the  
16 specificity the people are looking for can be found by  
17 using that broad law and then what the states and what  
18 the guidance documents have said to interpret or give  
19 more direction to that.

14:26:26 20 Q. All right. You said something that I want you to  
21 elaborate on for a moment.

22 You referenced cases.

23 Now, as lawyers, we dream about cases.  
24 This is our life since law school.

14:26:42 25 But I think a lot of people don't

1 understand the significance of cases when it comes to  
2 things like pharmacy practice.

3 We're going to talk about some cases, but  
4 why are cases important to pharmacists?

14:27:01 5 A. Speaking as a pharmacist and not as an attorney --

6 Q. Right. Right. And the Judge won't let you comment  
7 on the law and he'll yell at me if I ask you to -- he  
8 doesn't yell -- he will stop me if I ask you on the law.

9 But so speak as a pharmacist, please.

14:27:18 10 A. So I'm not sure of all the proper terminology  
11 within the law profession.

12 Q. Okay.

13 A. But when a court -- when a case goes to trial or in  
14 the court and the DEA or others are involved, the  
14:27:32 15 decisions, the conclusions and findings in that case are  
16 binding on other pharmacies that may have been engaging  
17 in that practice or may be thinking of that practice.

18 So when a Court case comes out and a  
19 defendant in a case may say red flags were never known in  
14:27:52 20 pharmacy practice, they never existed, it's a term that  
21 people aren't familiar with, but then the Administrative  
22 Law Judge in the case says you're wrong, red flags have  
23 been around for a significant amount of time and they  
24 have been known in pharmacy and pharmacists, that becomes  
14:28:08 25 a precedent and a standard so that others to try and make

1 that argument as a defense, it simply won't hold water  
2 any longer because this Court and this case has said that  
3 argument is no longer valid.

4 MR. MAJORAS: Objection to the term  
14:28:23 5 binding, and he's already said he's not a lawyer.

6 THE COURT: Well, I'll allow the answer  
7 with the caveat that this is this witness's understanding  
8 as to what he as a pharmacist has to do if there's a  
9 case. That's how it goes in.

14:28:45 10 MR. LANIER: Yes.

11 BY MR. LANIER:

12 Q. And so we're clear and the record is clear, you are  
13 giving your understanding of what needs to be complied  
14 with for all good practices or practices of standards as  
14:28:57 15 opposed to the legal understanding.

16 Is that fair?

17 A. Yes, sir.

18 Q. And you'll continue to do that, speak as a  
19 pharmacist speaking about what it means to comply with  
14:29:06 20 all good practices or practices of standards, okay?

21 A. Yes, sir.

22 Q. So if a case comes out like you talked about and  
23 says these are red flags, they need to be resolved before  
24 you dispense medicine, and that's the holding in a case,  
14:29:20 25 does that become a good practice or practice of standards



1 that you believe a good pharmacist will comply with?

2 A. From a pharmacist perspective and what I've seen  
3 over the past 40 years, the answer is yes, sir.

4 Q. All right. Now, within the confines, then, the  
14:29:42 5 states require documentation and I've gotten away,  
6 perhaps, from your list.

7 Security systems, backup systems,  
8 recordkeeping, the pharmacy standard of care, drug  
9 utilization review.

14:29:57 10 Can we talk about that just briefly?

11 What is -- and I know that's a term of art  
12 that we'll come back to with you later -- what is drug  
13 utilization review? And let's start with is that  
14 frequently abbreviated?

14:30:20 15 A. Yes, sir.

16 It's different terminologies. It can be  
17 abbreviated, DUR. In some cases, it's called medication  
18 management.

19 It's the process and responsibility that a  
14:30:31 20 pharmacist has to undertake every time they receive a  
21 prescription. It's written in the state laws and  
22 practice acts. It's part of the standard of care that a  
23 pharmacist has to meet. And what it says is when I  
24 receive a prescription as a pharmacist, I have to check  
14:30:48 25 that prescription, I have to do a review of that

1 prescription, is it the right drug, is it the right  
2 strength, is it the right course of therapy, is it  
3 interacting with anything else that the patient is  
4 taking, does the patient have any allergies that could  
14:31:07 5 impact this medication?

6 And does the therapy look like it's  
7 appropriate and the directions are appropriate for the  
8 patient?

9 Every single prescription has to undergo  
14:31:17 10 that process, and it's required legally and as a standard  
11 of care in every pharmacy in the U.S.

12 Q. Okay.

13 MR. LANIER: Your Honor, I confess, I  
14 forgot. Am I targeting to stop at 2:30 or 3:00?

14:31:34 15 THE COURT: 3:00.

16 MR. LANIER: 3:00, good.

17  
18 BY MR. LANIER:

19 Q. So, sir, that's opinion number one.

14:31:42 20 I'd like to move on to opinion number two.

21 Opinion number two, you said, "The practice  
22 of pharmacy is subject to established and well-known  
23 standards of care, including requirements for the careful  
24 evaluation of prescriptions and efforts to guard against  
14:32:02 25 the diversion of medications into nonmedical or

1 illegitimate use."

2 Did I read that correctly?

3 A. Yes, sir.

4 Q. Is that your opinion?

14:32:13 5 A. Yes, sir.

6 Q. I know you've given us some background information  
7 to help us understand this opinion, but I'd like you to  
8 explain it in your best understanding for us.

9 Elucidate.

14:32:30 10 A. Sure.

11 What I could add from what I've mentioned  
12 earlier is that the curriculum, the program that a  
13 pharmacist undergoes, which is eight years of study --

14 Q. How many?

14:32:38 15 A. Eight years of study. There are some programs that  
16 vary that may be five years or six years, but those are  
17 full-time all year-round programs.

18 The basic education of a pharmacist is  
19 probably six years, and some people undergo eight years,  
14:32:53 20 depending upon what they did as pre-pharmacy.

21 The focus of that education is medications,  
22 how medications work, how patients react to medications,  
23 and within that curriculum and that training are all of  
24 the standards of care that a pharmacist has to know and  
14:33:15 25 that have been defined by practice and have been defined

1 by studies.

2 Pharmacists are also required to take  
3 pharmacy law, and in those pharmacy law classes, they are  
4 taught and quizzed on federal laws, just as we explained  
14:33:31 5 earlier, as well as state law.

6 So that by the time a pharmacist leaves  
7 pharmacy school and passes the national pharmacist exam  
8 and the state law exam, they're safe to stand behind that  
9 counter and dispense medications to you.

14:33:46 10 Q. Now, a thought that occurs to me that I'd like you  
11 to see if you can comment on is that if people go and  
12 study for five, six, maybe as many as eight years, and  
13 focus not only on the medicines but how they work and how  
14 people react, and people take a pharmacy law course, then  
14:34:14 15 why is it important that the pharmacy that employs these  
16 pharmacists, why is it important that a pharmacy train  
17 pharmacists further or give them extra tools or extra  
18 understanding?

19 A. Even though the pharmacist may be prepared from a  
14:34:34 20 competence standpoint, they know what the drugs are, they  
21 know how they work, they know what the law is, when you  
22 work in a pharmacy just like any other place of  
23 employment, every place has its own system, every place  
24 has its own staffing, and it's critical for that new  
14:34:49 25 pharmacist to understand those processes, to be trained

1 in those processes, and to be given the tools that they  
2 need to be able to utilize the education and training  
3 that they've -- they've earned for their degree.

4 Even though they're competent to practice  
14:35:04 5 and they have a license, doesn't mean that they're fully  
6 prepared yet. They need that training and they need that  
7 support from the pharmacy to actually be able to practice  
8 effectively and, again, safely in that pharmacy setting.

9 Q. The way I've written this, I want to make sure I've  
14:35:20 10 accurately conveyed your testimony because I may come  
11 back to this slide later, the pharmacist may be competent  
12 but she or he needs training and tools on the job, it's  
13 part of their preparation.

14 Is that --

14:35:34 15 A. Yes, sir.

16 Q. Okay. Now, is this something that's new or has  
17 this been around for a long time?

18 A. It's been around since the beginning of pharmacy,  
19 sir.

14:35:52 20 Q. You did pharmacy history or you got some award for  
21 it or something.

22 How long have pharmacies been around in the  
23 United States and regulated, if you know?

24 A. Sure. 1854 was when the first pharmacy school was  
14:36:06 25 founded. It was the Philadelphia College of Pharmacy.

1 And then shortly thereafter, pharmacy  
2 organizations were founded and pharmacy education went  
3 from on-the-job training and apprenticeships to the early  
4 1900s so since that time, there have been standards of  
14:36:23 5 care, formal education and defined requirements for  
6 pharmacy.

7 Q. Okay. Excellent.

8 So why is your opinion number two going to  
9 be important to us later in this case?

14:36:43 10 A. It's really at the crux of the matter.

11 If the pharmacist doesn't follow standards  
12 of care and doesn't conduct that careful evaluation, then  
13 they're not meeting their responsibilities and the  
14 patient's at risk.

14:36:58 15 Q. And in that regard, what role does the pharmacy  
16 play to make sure the pharmacist does this?

17 A. Again, the pharmacy has to support that pharmacist.

18 With the system in place, the staffing in  
19 place, the information provided to the pharmacist.

14:37:17 20 We would not as consumers and patients  
21 expect a company that made store vaccines when we're  
22 supposed to store vaccines at 30 below zero to simply put  
23 that in a refrigerator or not to have a sterile  
24 environment and for the company to say to the person  
14:37:38 25 administering that vaccine or dispensing it saying it's

1 not my responsibility that you don't have the right  
2 refrigeration or the right sterility. You take care of  
3 it. That's not how the pharmacy works either. The  
4 pharmacy has to provide that support for the pharmacist  
14:37:51 5 because of the registrant under the Controlled Substances  
6 Act, they are licensed by the state to make sure those  
7 requirements are in place and they have to deliver that,  
8 otherwise the patient's at risk.

9 Q. All right. Thank you.

14:38:05 10 Opinion number three. You said that the  
11 federal and Ohio State controlled substances laws and  
12 regulations require each defendant to maintain effective  
13 controls for a closed system of distribution and  
14 dispensing of opioids that guards against diversion."

14:38:29 15 Is that your opinion?

16 A. Yes, sir.

17 Q. All right. I want to break this apart to  
18 understand the opinion.

19 The federal substance laws you're talking  
14:38:46 20 about, what's the main one at issue in this case?

21 A. The Controlled Substances Act is how it's commonly  
22 known, CSA.

23 Q. And I told the jury that that was passed under  
24 President Nixon in 1970 or '71.

14:39:04 25 Was I right?

1 A. Yes, sir.

2 Q. And from a pharmacist's perspective -- we've heard  
3 about it from a doctor's, but from a pharmacist's  
4 perspective, what is significant about the Controlled  
14:39:19 5 Substances Act when it comes to the dispensing of  
6 opioids?

7 A. The Controlled Substances Act places certain  
8 requirements on pharmacists and pharmacies to ensure that  
9 there is a closed system as we talked earlier and, two,  
14:39:36 10 that those opioids are dispensed for legitimate medical  
11 purpose.

12 And the Controlled Substances Act outlines  
13 what the parameters would be for a legitimate medical  
14 purpose.

14:39:46 15 Q. All right. And I think some of your other opinions  
16 go into some details on that, so for right now, just for  
17 us to keep it in our brain, the requirements to ensure a  
18 closed system, is that the system that we were talking  
19 about before in opinion one?

14:40:04 20 A. Yes, sir.

21 Q. To maintain effective controls, who defines what an  
22 effective control is?

23 A. Again, the federal and state requirements list what  
24 a pharmacy and pharmacists are expected to do, how those  
14:40:26 25 controls are actually implemented by individual



1 pharmacies is left to a pharmacy but they have to meet  
2 the requirements. They can't simply avoid meeting the  
3 requirements.

4 So, for example, the requirements say that  
14:40:41 5 there must be inventories conducted of the controlled  
6 substance products to ensure that if there's a loss of  
7 those products or someone's diverting them, the pharmacy  
8 has a mechanism to detect it.

9 It doesn't specifically say how they have  
14:40:56 10 to count that, who has to count that, but they do set  
11 parameters as to why that inventory should be done, how  
12 it should be recorded, and if there are problems with the  
13 inventory how that should be reported.

14 Q. Okay. So if the Government says it's got to be  
14:41:11 15 done and there are lists perhaps provided in decisions or  
16 in state cases, state regulations or something, you say  
17 the pharmacy gets to choose how to -- how those controls  
18 would be implemented?

19 A. To a certain extent.

14:41:25 20 They have to meet the requirements, and  
21 then if there are specific requirements that have to be  
22 done, they have to follow those requirements as well.

23 Q. So if the requirements say you must inventory once  
24 a week or once a month, the obligation is there, but it's  
14:41:41 25 up to the pharmacy to decide whether they do it by

1 counting in the middle of the day or weekend or whatever?

2 A. Correct, sir. Yes.

3 Q. All right.

4 If something's got to be locked up, the  
14:41:57 5 pharmacy gets to figure out where their locking area is  
6 and how they lock it up?

7 A. Correct. The requirements would say you have to  
8 have a secure area. The secure area has to meet certain  
9 standards of security but then it's up to the company if  
14:42:11 10 they wanted to put other things in place to make it more  
11 secure but they can't go below what those requirements  
12 are.

13 Q. All right. Can you explain to us, please, the  
14 difference between these words "distribution" and  
14:42:23 15 "dispensing" when it comes to opioids?

16 A. Yeah.

17 Distribution is what occurs when a  
18 manufacturer ships products to a wholesaler, or a  
19 wholesaler ships products to a doctor or a pharmacy or a  
14:42:34 20 hospital.

21 There's no prescription involved, and the  
22 end recipient of those is not the patient.

23 Dispensing is very strictly defined in all  
24 the state practice acts and regulations and involves the  
14:42:50 25 pharmacist receiving a legitimate prescription and

1 dispensing the medication, dispensing to a patient.

2 Q. And then dispensing of opioids as opposed to  
3 distribution is what?

4 A. Dispensing then is usually defined in again, the  
14:43:12 5 state practice acts and regulations and is not addressed  
6 specifically under federal law.

7 Federal laws are more concerned with the  
8 closed distribution, the security, and validity.

9 Dispensing is reserved for the state Boards  
14:43:28 10 of Pharmacy of the states, such as the Ohio Board of  
11 Pharmacy.

12 Q. All right.

13 Is dispensing in laymen's terms the idea of  
14 selling or giving the prescription to the patient?

14:43:44 15 A. Yes. The act of receiving a prescription,  
16 interpreting that prescription, analyzing that  
17 prescription, and then dispensing or giving the  
18 medication to the patient.

19 Q. All right. And is that dispensing subject to the  
14:44:00 20 drug utilization review standard of care that you talked  
21 about before?

22 A. Yes, sir.

23 Q. Okay. Now, I'd like to go to opinion number four  
24 at this point, and opinion number four is rather long so  
14:44:17 25 let's break it up to talk about it, please. Okay?

1 "Corporate oversight includes established  
2 practices of pharmacies that should incorporate top-down  
3 compliance programs using data readily available to the  
4 corporation to guard against diversion."

14:44:39 5 Did I read the first sentence right?

6 A. Yes, sir.

7 Q. All right. I want to break it down and fully  
8 understand your opinion.

9 By the way, these opinions have come out of  
14:44:52 10 your report, is that right?

11 A. Yes, sir.

12 Q. Take a moment and tell the jury what you put  
13 together as a report so they understand where this is.

14 A. I'm sorry?

14:45:04 15 Q. Yeah. You wrote a report in this case?

16 A. Correct.

17 Q. Explain to the jury what you did in your report.

18 A. For my report, I looked at a wealth of information  
19 that was provided to me.

14:45:20 20 I looked at policies and procedures that  
21 defendants had, I looked at the individual prescriptions,  
22 and I looked at analysis of those prescriptions that were  
23 performed by another expert.

24 And I looked at then also what the  
14:45:34 25 dispensing practices were of the defendants in the case

1 in relation to all those items.

2 Q. All right. And then you put into a written report  
3 your opinions?

4 A. Yes, sir.

14:45:44 5 Q. And did you explain your opinions to the defendants  
6 in that report?

7 A. In the report, yes, sir.

8 Q. And did the defendants have a chance to take your  
9 deposition and your sworn testimony to explain these  
14:45:58 10 issues?

11 A. Yes, sir.

12 Q. In fact, I think they've done it more than once?

13 A. Yes, sir.

14 Q. Because you supplemented your report with some  
14:46:08 15 additional material when you got it?

16 A. Yes, sir.

17 Q. All right. So within the framework of that, in  
18 your report, you explain this a lot more, but I'd like to  
19 break it apart for the jury and the record.

14:46:19 20 "Corporate oversight," what do you mean by  
21 that concept "corporate oversight"?

22 A. So what the law says, in my opinion as a  
23 pharmacist, is that the pharmacy is defined as a  
24 responsible party. At NABP and in state laws and state  
14:46:39 25 regulations, the term is used as a person, and a person

1 is defined as a pharmacy, pharmacist. So the pharmacy is  
2 a person that's responsible for the activities in that  
3 pharmacy.

4 The pharmacy can't simply say it's all on  
14:46:54 5 the pharmacist. They have to exercise their professional  
6 judgment. We take the hands-off approach. So what I  
7 meant by that opinion in terms of corporate oversight is  
8 the pharmacist is interacting on a daily basis with  
9 patients. They have limited information available to  
14:47:09 10 them.

11 The corporate oversight, the owner of that  
12 pharmacy, the one who sets the policies for that  
13 pharmacy, how much staffing there's going to be, when  
14 breaks will occur, how much people get paid, that  
14:47:24 15 corporate oversight also extends to responsibility for  
16 making sure that the pharmacist gets all the information  
17 they need.

18 And that corporate entity knows how many  
19 opioids are purchased across all their pharmacies. They  
14:47:42 20 have information about which doctors may be prescribing  
21 opioids inappropriately. They know how much each  
22 pharmacy is dispensing. They have all that information  
23 that they could then share and give to the pharmacist so  
24 the pharmacists make better decisions.

14:47:59 25 So corporate oversight includes getting

1 that information and then just as they monitor policies  
2 for saying how long it takes to fill a prescription or  
3 how long patients are waiting, they should be monitoring  
4 whether pharmacists are complying with their  
14:48:13 5 requirements.

6 And going back to those pharmacists and  
7 saying you didn't comply, you were dispensing all these  
8 medications that were way outside of what the standards  
9 of care or what the norms were; we need to sit down and  
14:48:26 10 look at this and take action.

11 That's what I meant by corporate oversight  
12 and what the responsibilities would be.

13 Q. Okay. You've got a lot in there under corporate  
14 oversight and I've got what Ms. Sue is typing so fast but  
14:48:43 15 I want to make sure that we've got it right here.

16 So corporate oversight, do you include  
17 setting policies?

18 A. Yes, sir.

19 Q. Corporate oversight, do you include setting  
14:48:54 20 staffing numbers and levels?

21 A. Yes, sir.

22 Q. Do you include when breaks occur?

23 A. Yes, sir.

24 Q. Do you include the money that's paid, the salaries  
14:49:03 25 that's paid to the pharmacists or to the technicians and

1 the others working?

2 A. Yes, sir.

3 Q. Corporate oversight, do you include the information  
4 system made available to the pharmacist?

14:49:22 5 A. Yes, sir.

6 Q. And did you include in that also policies for how  
7 quickly or how long it might take to fill a prescription?

8 A. Yes, sir.

9 Q. Is that called wait time?

14:49:41 10 A. That's the colloquial, yes, sir.

11 Q. How would corporate oversight determine wait time?

12 A. When someone drops off a prescription and it's  
13 entered into the computer system, it's time stamped that  
14 that prescription, when it was received.

14:50:08 15 When it was dispensed, at the point of  
16 sale, there's another time stamp saying that the patient  
17 received it at this point so they can monitor throughout  
18 the system where that prescription is and how long it's  
19 taking to get to DUR, how long it's taking to identify  
14:50:24 20 what medications are and actually put those in the  
21 bottles, all that is time stamped throughout the process  
22 and within the computer systems.

23 Q. And if a pharmacy wanted to decrease wait times,  
24 how could a pharmacy go about doing that?

14:50:43 25 A. One way would be to provide more staffing, more



1 technicians, more pharmacists, better tools for the  
2 pharmacists to utilize, a number of ways that they can  
3 reduce the wait time.

4 Q. Okay. And then you also referenced that a  
14:51:01 5 corporate oversight includes monitoring the pharmacists.

6 What did you mean by that?

7 A. If there are policies and each of the defendants  
8 had policies on what red flags were and what to do when  
9 opioids were dispensed, if you have those policies, then  
14:51:23 10 you have to have some way of monitoring those policies to  
11 make sure that they were followed. If you don't monitor  
12 those policies, then why do you have policies.

13 And that's what I was referring to, that  
14 they should have had a system to monitor, and if they  
14:51:38 15 weren't being monitored, then they have to take action to  
16 find out why they weren't being monitored.

17 And if it's a case where the pharmacist was  
18 incompetent or there was something occurring like  
19 diversion or the tools weren't in place, then as a  
14:51:51 20 corporate -- corporation, I have responsibility to fix  
21 that issue and not let it continue.

22 Q. Okay. So corporate oversight includes established  
23 practices of pharmacies that should incorporate top-down  
24 compliance programs.

14:52:10 25 What is a top-down compliance program?

1 A. I was referring to the fact that the corporate  
2 headquarters, the corporation that's in charge, the one  
3 setting the policies, they have the ability to dictate or  
4 change what happens in that pharmacy, and it has to come  
14:52:30 5 from the top down.

6 The pharmacists and the individual  
7 pharmacies can't say to corporate this is how we're going  
8 to do it, this is how we're going to pay people, this is  
9 what we're going to charge for prescriptions.

14:52:42 10 That all comes from corporate. And just as  
11 those policies are implemented, that's how compliance  
12 policies should be implemented as well.

13 Q. Okay. And compliance policies meaning complying  
14 with the standards and laws is understood?

14:53:00 15 A. Yes, sir.

16 Q. All right. So using data readily available to the  
17 corporation to guard against diversion, what kind of data  
18 are you talking about here?

19 A. As we mentioned, they have totals on what types of  
14:53:14 20 medications they're buying, how much is being dispensed  
21 at each individual pharmacy, how much is being dispensed  
22 in a certain region, what doctors are the highest  
23 prescribers of certain medications, all those data that  
24 they collect at the corporate level, that's not available  
14:53:32 25 to the pharmacist at the individual pharmacy, is the data

1 I was referring to, sir.

2 Q. Oversight also should -- you go on to say, excuse  
3 me, "Oversight also should support, and not impede,  
4 pharmacists in complying with laws and regulations  
14:53:56 5 related to the dispensing of controlled substances."

6 Explain what you mean by "Oversight should  
7 support and not impede."

8 A. And we touched on this briefly earlier.

9 If a policy says that a pharmacist has to  
14:54:09 10 fill a prescription within a certain amount of time, and  
11 that restriction then prevents the pharmacist from doing  
12 the drug utilization review or taking the time to review  
13 that prescription, that impedes what the pharmacist  
14 should be doing and that type of policy shouldn't be in  
14:54:29 15 place.

16 What should be in place is the policies  
17 that support the pharmacists and say let's make sure that  
18 every patient is actually evaluated as they need to be,  
19 and if you need more help, then there's a mechanism,  
14:54:42 20 there's a way for you to signal that and for us to  
21 provide that additional staffing or additional support to  
22 you.

23 Q. In that regard, if you're going to have, let's say,  
24 two pharmacists working a shift instead of one, with the  
14:54:55 25 idea that you're going to cut the time in half, are there

1 pharmacy practice reasons that that's a bad idea, or is  
2 it really just a case of economics?

3 A. I think it could be either one of those, sir.

4 Medications, a pharmacist's salary is  
14:55:18 5 significantly higher than a technician's salary so to  
6 have two pharmacists and a technician would be a  
7 significant financial impact.

8 Many times the pharmacies where a good  
9 technician is worth more than a good pharmacist because  
14:55:33 10 the technician knows the systems, can interact with the  
11 computer, can do things maybe a lot quicker than another  
12 pharmacist, so it would be on a case-by-case basis.

13 Q. In that regard, you mentioned a good technician,  
14 better than some pharmacists.

14:55:46 15 Is it fair to say -- are there good and bad  
16 pharmacists?

17 A. Yes. Just like with lawyers, there's good and bad  
18 lawyers, there's good and bad pharmacists as well.

19 Q. I'm going to take that as I hope you meant it.

14:56:05 20 Good and bad technicians?

21 A. Yes, sir.

22 Q. All right. To just paint everybody with the same  
23 brush is probably not fair in any profession or any job  
24 that we do, is that right?

14:56:22 25 A. Any profession, any group of people, yes, sir, it's

1 not fair.

2 Q. All right. So when you give this opinion that  
3 oversight should support and not impede pharmacists in  
4 complying with the laws and regulations, is that  
14:56:38 5 something that a good company will do?

6 A. A good company, a company that's compliant, a  
7 company that takes their responsibility seriously.

8 Q. And in this regard, I want to ask you specifically  
9 about some chain pharmacies.

14:56:53 10 Are chain pharmacies and their agents  
11 responsible persons under the Controlled Substances Act?

12 MR. MAJORAS: Objection. Legal conclusion.

13 MR. LANIER: From a pharmacy perspective  
14 only, Your Honor, do they consider themselves that; not  
14:57:11 15 is that the law.

16 MR. MAJORAS: Not an appropriate question  
17 for a pharmacist.

18 MR. LANIER: Which he is.

19 THE COURT: He can answer that from his  
14:57:18 20 understanding as a pharmacist.

21 BY MR. LANIER:

22 Q. Yeah. From your understanding as a pharmacist and  
23 as the ex-head of the National Association of Boards of  
24 Pharmacies, did you operate under the premise that chain  
14:57:34 25 pharmacies and their agents are responsible persons under

1 the Controlled Substances Act?

2 A. Yes, I did.

3 And also in the model regulations that  
4 NABP, when I was Executive Director, provided to the  
14:57:48 5 states, we just defined persons, pharmacies and  
6 pharmacists as the same entity.

7 Q. And you've just thrown us something that we didn't  
8 discuss earlier.

9 Model regulations.

14:58:02 10 What are you talking about?

11 A. Because every state feels that what they do in  
12 their state is better than the other states, when in  
13 reality there's more uniformity amongst the states than  
14 people consider. NABP is a national organization. We  
14:58:19 15 developed national standards or national regulations and  
16 there was a publication called *Model Practice and Acting*  
17 *Roles* and we would commission task forces and do studies  
18 to come up with those national models and rules and then  
19 we would send those to the states or the states would  
14:58:37 20 have access to utilize them.

21 And each state decided how much they wanted  
22 to adopt of those national standards.

23 In the Model Act, persons are defined as  
24 pharmacies and pharmacists, and every state incorporated  
14:58:49 25 that definition in their model acts and rules.

1 Q. All right. Good.

2 And from the perspective of your work as  
3 the head of the Boards of Pharmacy, the National  
4 Association of Boards of Pharmacies, and from your  
14:59:14 5 experience not as a lawyer, I do not want a legal  
6 interpretation, from your experience, does a chain  
7 pharmacy corporation, through the control it exerts over  
8 its agent pharmacies, pharmacists, and pharmacy  
9 employees, hold responsibility -- and I'm not asking  
14:59:34 10 legal responsibility -- but responsibility for ensuring  
11 all dispensing of controlled substances is carried out in  
12 accordance with the applicable laws and regulations,  
13 whatever they may be?

14 A. Yes, sir.

14:59:48 15 Q. Okay.

16 A. And the reason for that is twofold.

17 One, as we talked earlier, the pharmacy is  
18 the registrant under the federal law, and at the state  
19 level, the pharmacy is also the permit holder or the  
15:00:02 20 registrant. And I am aware, based on my experience and  
21 interactions with the states, that many times the state's  
22 Boards of Pharmacy will take action only against the  
23 pharmacist, but if the pharmacy hasn't put in place the  
24 right systems, the right controls to support that  
15:00:19 25 pharmacist, they will take action against that pharmacy's

1 permit or license because they're holding that pharmacy  
2 accountable as well.

3 MR. LANIER: Your Honor, Mr. Weinberger is  
4 telling me it's time for a restroom break.

15:00:37 5 THE COURT: All right. If this is a good  
6 stop, stopping point, we'll take one.

7 Ladies and gentlemen, we'll take our  
8 mid-afternoon break, 15 minutes, usual admonitions.

9 Thank you.

15:00:46 10 (Jury out.)

11 (Recess taken.)

12 (Jury in.)

13 THE COURT: Okay. Please be seated.

14 And, Mr. Catizone, I just want to remind  
15:20:51 15 you you're still under oath.

16 You may proceed, Mr. Lanier.

17 BY MR. LANIER:

18 Q. Mr. Catizone, it is 3:21 in the afternoon and that  
19 is a time when energy can get low and your voice can get  
15:21:10 20 low, and I'm not going to let that happen.

21 I would like you to please speak up and  
22 give us that Catizone fastball. Okay?

23 A. Yes, sir.

24 Q. What?

15:21:23 25 A. Yes, sir.



1 Q. All right. Before the break, you were offering  
2 opinion number five, and -- or actually it was opinion  
3 number four, which talked about corporate oversight,  
4 including the established practices of pharmacies that  
15:21:51 5 would incorporate top-down compliance program using data  
6 readily available, and I was going to break it apart but  
7 I think you've covered it unless you think there's  
8 anything more you need to add about -- yeah, let's do it.

9 What data is available to corporate  
15:22:09 10 oversight -- to the corporation that may not be so  
11 readily available to an individual pharmacist working  
12 their shift?

13 A. Sure.

14 The corporation has all of the data from  
15:22:20 15 all of the pharmacies, as well as all the aggregate data.  
16 So again, how much -- how many drugs were bought, how  
17 many drugs were dispensed, what the prescription totals  
18 and volumes were at each pharmacy, they could even track  
19 it down to pharmacists, how much prescriptions a  
15:22:40 20 pharmacist fills or checks. So they have all that data  
21 at the corporation headquarters.

22 Q. Does that allow --

23 A. Mr. Lanier, can I -- the Court Reporter was having  
24 trouble hearing before.

15:22:49 25 Could I ask if it's better now?

1 MR. LANIER: Ms. Sue, can you hear the  
2 witness better?

3 COURT REPORTER: Yes.

4 THE WITNESS: Okay. Thank you.

15:22:58 5 BY MR. LANIER:

6 Q. The aggregate data that you were talking about,  
7 does that allow corporations or the mother ship, if you  
8 will, to see trends?

9 A. Yes.

15:23:16 10 Q. Are trends important in the dispensing of opioids?

11 A. Yes.

12 Q. Why are trends important?

13 A. The trends are an indication of what might be  
14 happening in a particular pharmacy, a particular county,  
15:23:32 15 a particular state. So if there's a trend where they're  
16 seeing more opioids dispensed than in other pharmacies or  
17 counties or states, that would be an alarming trend for  
18 them to look at and do some investigation.

19 Q. So is it important for corporate oversight to also  
15:23:56 20 give those insights to the pharmacists?

21 A. That would be part of the information and  
22 information systems that pharmacists would need to do a  
23 better job in the pharmacy.

24 If I knew, for example, that within my  
15:24:10 25 pharmacy area that a particular doctor was trending and

1 writing more opioid prescriptions than he had been or she  
2 had been before or other doctors in the area, that would  
3 cause me to say -- pay more attention to that doctor or  
4 to do more investigation to make sure that there wasn't  
15:24:27 5 something happening or at least to make sure that I knew  
6 what was happening and document that so that other  
7 pharmacists would know as well.

8 Q. Very good.

9 Now, I want to -- and our Special Master  
15:24:42 10 has seen these slides before I used them, but I want be  
11 -- I'm going to modify this one on the slide to make sure  
12 you are aware and the Court's aware and the record's  
13 aware of how I want to see this.

14 Here's the question. And the way I'm  
15:24:56 15 modifying it.

16 Under your practice, in other words not  
17 under the law, but under your practice -- I can't  
18 spell -- practice, can a pharmacy absolve itself of its  
19 responsibilities under the CSA -- the CSA  
15:25:19 20 responsibilities -- by placing unilateral responsibility  
21 on the pharmacist dispensing the prescription?

22 And again, I don't want you to answer that  
23 whether they can resolve them legally. That's not our  
24 issue for you to answer.

15:25:34 25 But just by responsibility of your

1 practice, can a pharmacy absolve itself under those -- by  
2 placing responsibility on the pharmacist?

3 A. No, sir.

4 The pharmacy is the registrant, and the  
15:25:49 5 pharmacy has obligations that it has to meet under the  
6 Controlled Substances Act, and those responsibilities  
7 can't simply be pushed aside by saying it's the  
8 pharmacist who has the ultimate decision-making authority  
9 and I can't do anything to question that pharmacist's  
15:26:08 10 authority.

11 That's not how the law's been interpreted.  
12 That's not how the law's practiced.

13 Q. Is it fair --

14 MR. BUSH: Your Honor, excuse me.

15:26:17 15 I object to that. Move to strike.

16 THE COURT: Well, the last -- the last  
17 sentence I will strike.

18 Most of it was fine, but that last sentence  
19 about "that's how the law has been interpreted, that's  
15:26:30 20 how the law is practiced," the jury is to disregard that  
21 sentence.

22 BY MR. LANIER:

23 Q. And these are difficult questions to answer but if  
24 you'll listen, I'll try really hard to take  
15:26:48 25 responsibility myself to focus it in a way that makes it

1 admissible evidence.

2 Okay?

3 A. Yes, sir.

4 Q. I want to do the same emphasis that I did here.

15:26:58 5 Don't tell us what's legally right, but  
6 tell us under your practice is a corporate chain pharmacy  
7 responsible for its operations, including individual  
8 pharmacy stores and employees. Again, not under the law  
9 but under your practice.

15:27:17 10 A. Yes.

11 Q. And is that important?

12 A. It's extremely --

13 MR. DELINSKY: Your Honor, objection.

14 Could we do a side-bar, please?

15:27:29 15 (Proceedings at side-bar:)

16 MR. DELINSKY: Can you hear me, Your Honor?

17 THE COURT: Yes.

18 MR. DELINSKY: Okay. The basis of the  
19 objection is there's two issues in this case.

15:27:49 20 Issue number one is did the  
21 defendant -- from a culpability perspective, is did the  
22 defendants act intentionally? This testimony doesn't  
23 pertain to that.

24 Issue number two is did they violate  
15:28:03 25 statutes or regulations, laws?

1                   Testimony about customs, standard of cares  
2                   in the industry, that is not about what would statutes  
3                   provide or regulations provide. It's just irrelevant, so  
4                   this is a 402 objection, Your Honor.

15:28:19 5                   THE COURT: Well, you can't have it both  
6                   ways, Mr. Delinsky.

7                   If you want me to let him testify about the  
8                   law, I'll let him do it.

9                   I'll let him testify his understanding of  
15:28:30 10                  the law as a pharmacist. And if that's what you want,  
11                  I'll switch it. Let Mr. Lanier ask it that way. That  
12                  takes care of it.

13                  If you want that, we'll flip it around.

14                  He could properly testify as to his  
15:28:43 15                  understanding of the law as it applies to pharmacies and  
16                  pharmacists because he is one.

17                  He can't say what the law is but he can  
18                  certainly say what his understanding is in his practice.  
19                  So let's do that.

15:28:56 20                  MR. DELINSKY: Well, Your Honor, our  
21                  position is that it's neither.

22                  You should state what the law is and  
23                  provide what the law is.

24                  THE COURT: You can't have it both ways.  
15:29:04 25                  So if you want him -- if you want

1 Mr. Lanier to ask him what is his understanding as a  
2 pharmacist of what the responsibility, the legal  
3 responsibility of a pharmacy is, and the legal  
4 responsibility of what a pharmacist is, I think he's  
15:29:18 5 qualified to say that.

6 So I'll have Mr. Lanier ask it that way.

7 MR. DELINSKY: All right. Your Honor,  
8 given those choices, we'll -- we are preserving our  
9 objections and stay with the status quo.

15:29:30 10 THE COURT: No, I flipped it around.

11 I'll flip it around. That's what the  
12 defendants seem to want, so let's do it that way.

13 MR. WEINBERGER: Well, it's certainly what  
14 we want, Your Honor.

15:29:43 15 We were trying to walk the line based upon  
16 some earlier rulings, but we think we have the ability  
17 to -- should, to ask him from a pharmacist perspective  
18 based on his experience, was it lawful or unlawful to do  
19 certain things.

15:30:02 20 THE COURT: Well --

21 MR. DELINSKY: But, Your Honor, this  
22 is -- I feel that we're just in an improper territory  
23 because it's not for an expert in this case to either  
24 opine on what the law is or what the standard of care is.

15:30:18 25 Neither is appropriate for this case. The

1 Court, you should, Your Honor, be setting forth  
2 instructions on what the law is.

3 MR. WEINBERGER: Well, with respect to the  
4 standard of care --

15:30:29 5 THE COURT: All right. Is there any  
6 disagreement that the law imposes obligations on  
7 pharmacies and the law imposes obligations under  
8 pharmacists? Is anyone disputing that?

9 MR. DELINSKY: I think there's intense  
15:30:42 10 disagreement over what the law is.

11 THE COURT: I've already overruled you on  
12 that so I -- I mean, he's going to testify one way or the  
13 other.

14 I mean, what do you want him to say? Do  
15:30:51 15 you want him to say what his understanding -- his  
16 understanding of the legal obligations of the pharmacy  
17 and a pharmacist? He's qualified to say that.

18 It's his understanding and how he practiced  
19 it when he was a practicing pharmacist.

15:31:05 20 Let's just ask him it, ask him it that way.  
21 He was a practicing pharmacist, what did he feel his  
22 obligations were as a pharmacist and what did he feel was  
23 the obligations of his employer.

24 MR. LANIER: Fine.

15:31:23 25 THE COURT: Do it that way.



1 (End of side-bar conference.)

2 BY MR. LANIER:

3 Q. Mr. Catizone, I would like to ask you this as  
4 follows:

15:31:50 5 What was your understanding of the legal  
6 obligation as a pharmacist in terms of the CSA placing  
7 unilateral responsibility on the pharmacist dispensing?

8 What was your understanding of the legal  
9 obligation?

15:32:13 10 A. My understanding is that the CSA does not place  
11 unilateral responsibility on the pharmacist.

12 Responsibility also rests with the  
13 pharmacy.

14 Q. And is that --

15:32:29 15 THE COURT: Is that -- sir, is that how you  
16 practiced it when you were a practicing pharmacist for 20  
17 years?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: All right. I'd like you to  
15:32:36 20 testify on that basis then.

21 BY MR. LANIER:

22 Q. Yes.

23 In other words, the way you practiced, it  
24 was based on this legal understanding, is that fair to  
15:32:45 25 say?

1 A. Yes, sir.

2 Q. And is that the way your employer interacted with  
3 you?

4 A. Yes, sir.

15:32:52 5 Q. And is that the way, from the national Boards of  
6 Pharmacy or National Association of Boards of Pharmacy,  
7 is that the way that you all wrote your model legislation  
8 with that understanding?

9 A. Yes, sir.

15:33:17 10 Q. And is that important?

11 A. Yes, sir.

12 Q. In terms of policy?

13 Is that an important policy the way the  
14 system works?

15:33:25 15 A. Yes, sir.

16 I think the slide you had up there  
17 mentioned the pharmacy, pharmacist, and staff.

18 Q. Yes.

19 A. So as a practicing pharmacist, when I was the  
15:33:36 20 pharmacist in charge, I would not hire a pharmacist who  
21 wasn't licensed or hire a pharmacist who I didn't feel  
22 was competent to practice, just like if I was the company  
23 that owned a trucking company, I wouldn't hire a driver  
24 that wasn't licensed and I wouldn't put trucks on the  
15:33:56 25 road that were unsafe or didn't operate the way they

1 should.

2 The same principle applies as a practicing  
3 pharmacist in a pharmacy. The pharmacy has to provide  
4 the tools and the support that a pharmacist needs to  
15:34:09 5 practice so that the responsibility doesn't fall on the  
6 pharmacist alone. It has to fall on the pharmacy as  
7 well.

8 Q. Okay.

9 Now, as someone who's been in this arena  
15:34:22 10 for your entire adult life, and as someone who -- well,  
11 let me take a step back.

12 MR. LANIER: Your Honor, if I could strike  
13 that, I need to lay a foundation a little better.

14 BY MR. LANIER:

15:34:34 15 Q. When you were with the National Association of  
16 Boards of Pharmacy, you were the CEO, did you all  
17 interact with national chain pharmacies?

18 A. Yes, sir.

19 Q. In what way did the National Association of Boards  
15:34:58 20 of Pharmacy interact with chain pharmacies?

21 A. In a variety of ways.

22 Many times we worked with chain pharmacies  
23 on projects.

24 Many times we talked with chain pharmacies  
15:35:13 25 about what our position was on various practice

1 standards, rules, regulations.

2 Q. All right. Hold on, I want to make sure I've got  
3 this right.

4 You worked on joint product -- joint  
15:35:25 5 projects?

6 A. Yes, sir.

7 Q. Can you give us an example?

8 A. One of the documents and one of the projects  
9 mentioned in my report is a stakeholder task force on  
15:35:36 10 controlled substances, in which we worked with many of  
11 the major chains to try and better understand how red  
12 flags were being viewed, interpreted, and managed by  
13 doctors, pharmacists, and the manufacturers and  
14 distributors.

15:35:54 15 Q. I wrote state, but you said according to the --

16 A. Stakeholders.

17 Q. -- court reporter, stakeholders?

18 A. Yes, sir.

19 Q. Task force on controlled substances.

15:36:09 20 And what did y'all do in that regard?

21 A. There was a problem with communications between the  
22 doctors and pharmacists and pharmacies.

23 The doctors felt that the pharmacists were  
24 encroaching on the practice of medicine and making  
15:36:26 25 medical decisions because the doctors' position was

1 pharmacists should just fill every prescription they're  
2 given and should never question what the doctor has  
3 written.

4 The pharmacies, on the other side,  
15:36:40 5 including the chain pharmacies, had the different  
6 perspective, the perspective that I've talked with you  
7 about in terms of the pharmacist's responsibility to make  
8 sure that that prescription was right and to make sure  
9 that that prescription was safe for the patient.

15:36:56 10 So the stakeholder task force was convened  
11 to specifically look at the opioid issue and controlled  
12 substances because that's where most of the problems were  
13 occurring between prescribers who felt that their  
14 prescriptions weren't being dispensed by pharmacists  
15:37:14 15 because pharmacists were questioning them, and then  
16 pharmacies and pharmacists saying, "That's our  
17 responsibility, that's what we need to do."

18 And we convened a task force to bring the  
19 parties together to make sure everybody had an  
15:37:27 20 understanding of red flags responsibilities, so in the  
21 end the patient had access to medications and wasn't the  
22 one who suffered.

23 Q. All right. In addition to interacting with chain  
24 pharmacies by working on joint projects, were there any  
15:37:42 25 other interactions?

1 A. From time to time, we disagreed with chain  
2 pharmacies on the positions they took and testimony they  
3 may have given at a state level that we gave the  
4 opposite.

15:37:54 5 I can tell you that one of the positions or  
6 one of the items we disagreed with in the course of my  
7 tenure at NABP was documentation.

8 The position at that time of many of the  
9 chain pharmacies was that documentation was not needed  
15:38:12 10 and that documentation shouldn't occur and it was more of  
11 a liability for pharmacists and pharmacies to document  
12 what happened because it would become fodder for  
13 plaintiffs' attorneys to then take action against the  
14 pharmacies.

15:38:27 15 Our position always was that documentation  
16 was important, necessary, and it actually validated what  
17 the pharmacists and pharmacies did if they were doing the  
18 right things.

19 Q. Okay. Can you think of any other interactions?  
15:38:42 20 And I saw something about a joint council policy or  
21 something like that.

22 Was there ever a council policy or  
23 something of folks that worked with you all or maybe I've  
24 got that mixed up?

15:38:59 25 A. I'm not recalling it, sir, so.

1 Q. Then I've clearly got it mixed up.

2 All right. Now, you worked with the  
3 National Association of Boards of Pharmacy, and your  
4 interactions with pharmacists, pharmacies, and Government  
15:39:14 5 regulation entities and boards causes me to ask you to  
6 look at your sixth opinion where you say you would expect  
7 that each defendant became and remains aware of these  
8 requirements.

9 I need to ask you, first, what requirements  
15:39:35 10 do you expect each defendant would have become and remain  
11 aware of?

12 A. Those requirements are the controls that we talked  
13 about for the closed system for controlled substances,  
14 and then the fact that the pharmacist has to make sure  
15:39:49 15 that it's a valid prescription for a legitimate medical  
16 purpose and that the pharmacist does everything they can  
17 to make that determination by identifying red flags,  
18 resolving red flags, and then documenting the resolution  
19 of those red flags before a prescription is dispensed.

15:40:10 20 Q. And if each defendant, as a corporate entity, is  
21 aware of the need for a closed system and that the  
22 pharmacist must determine the validity of the Rx, the  
23 prescription, and deal with red flags and document, why  
24 would the defendant themselves, the pharmacies, know that  
15:40:49 25 as opposed to a pharmacist?

1 A. Those requirements are in the laws, in the rules,  
2 in the regulations because the opioid epidemic has been  
3 so tragic. It's well-known to even people who are not  
4 pharmacists or don't -- or not pharmacies but this has  
15:41:10 5 been a significant problem and it's injured a number of  
6 people and killed a number of people.

7 So it was also in the popular press, the  
8 things that we read every day that's outside of the  
9 professional pharmacy literature.

15:41:23 10 It was discussed by state Boards of  
11 Pharmacy and the DEA to presentations, at which  
12 defendants were present. There were actions taken  
13 against the defendants by the DEA where they specifically  
14 spelled out what the requirements were, and then if you  
15:41:40 15 look at the policies and procedures of the defendants,  
16 they contain many of the requirements or some of the  
17 requirements that we're talking about that we say  
18 that -- I say they were aware of and should have been  
19 aware of within their own policies and procedures.

15:41:55 20 Q. All right. I'd like you to break this apart and  
21 give us some examples, if you're able to.

22 Do you have your reports with you, by the  
23 way?

24 A. Yes, I do, sir.

15:42:04 25 Q. Don't hesitate to refer to them if you feel that



1 you need to for any of this, but I'd like to ask you  
2 about what you just told us.

3 You said, first of all, this has been a  
4 significant problem that has killed a significant number  
15:42:23 5 of people, right?

6 A. Yes, sir.

7 Q. And are you comfortable with the phrase "Opioid  
8 epidemic"?

9 A. Yes, sir.

15:42:33 10 Q. And is that information you would expect that the  
11 companies would be aware of?

12 A. Yes, sir.

13 Q. I've got a chart that was slide number 20 in your  
14 demonstratives, three waves of the rise in opioid  
15:42:56 15 overdose deaths.

16 Do you see this?

17 A. Yes, sir.

18 Q. And it doesn't look that huge until you get to the  
19 end, but if we had focused only on the beginning, I think  
15:43:09 20 it would look a little different.

21 So let's look at that first wave.

22 The top line is any opioid, fair?

23 A. Yes, sir.

24 Q. The purple line are synthetic opioids like Tramadol  
15:43:24 25 or Fentanyl, whether they were prescribed or made

1 illicitly.

2 True?

3 A. Yes, sir.

4 Q. And then we've got the blue line is heroin, right?

15:43:37 5 A. Yes, sir.

6 Q. And then the light blue line, commonly prescribed  
7 opioids, natural and semisynthetic opioids and Methadone.  
8 This is going to be, what, Oxycodone and OxyContin and  
9 Percocet and things like that?

15:43:55 10 A. Yes, sir.

11 Q. Okay. So if we look just at the first wave, wave  
12 one, and we do nothing except look in that section and  
13 Zoom it up, why would you consider this to be a wave or a  
14 rise in opioids from 1999 to 2005, opioid deaths?

15:44:22 15 A. If the opioids are properly prescribed and  
16 dispensed, you wouldn't expect to see any deaths or  
17 minimum deaths or injury from those prescription drugs.

18 The fact that we have this trend that  
19 you're showing up on the screen and the number of opioid  
15:44:40 20 deaths is rising from opioids and rising so significantly  
21 would be one of those early trends that would cause some  
22 concern.

23 Q. Okay. And if we focus on the light blue line,  
24 which is the prescription opioid deaths, in a period of  
15:44:57 25 five years to go from slightly over one per 100,000 to

1 almost three is an almost tripling?

2 A. Yes, sir.

3 Q. And is that a significant problem that you would  
4 expect those who are dispensing opioids would be  
15:45:21 5 attentive to?

6 A. Yes, sir.

7 Q. Then if we look at the second -- well, we will  
8 isolate that wave here.

9 If we look at the second wave, the second  
15:45:36 10 wave seems to go from 2004 to 2011.

11 Fair?

12 A. Yes, sir.

13 Q. And in this time period, we're able to see the  
14 deaths from opiates that are prescribed go from nearly  
15:46:01 15 three to four-and-a-half.

16 So another 150 percent increase or so, 150  
17 to 200 percent.

18 Fair?

19 A. Yes, sir.

15:46:13 20 Q. Would you expect that industries involved in  
21 dispensing these opioids would realize something like  
22 that?

23 A. Yes, sir.

24 Q. And by the same token, as that rise is going on,  
15:46:32 25 you've also got another big rise in any opioid, legal or

1 illegal.

2 Fair?

3 A. Yes, sir.

4 Q. If we go to the third wave, the third wave going  
15:46:48 5 from 2011 up to 2018, you continue to have the opioid  
6 that are commonly prescribed at a higher level, little  
7 bumps up, little bumps down.

8 Fair?

9 A. Yes, sir.

15:47:12 10 Q. Look what happens to any opioid when you include  
11 the synthetic opioids.

12 It goes way up, doesn't it?

13 A. Yes, sir.

14 Q. So I ask you in this regard, is this what you're  
15:47:24 15 talking about when you were saying that there's public  
16 information that the companies should have been aware of?

17 A. Yes, sir. And it goes to an earlier question you  
18 asked about the importance of trends in corporate data.

19 If I'm a pharmacist -- I am a pharmacist,  
15:47:44 20 but as a pharmacist, the last thing I want to do is for  
21 my patients to be injured or to die from prescriptions.  
22 So if I see a trend happening where people are dying from  
23 opioids, and that trend keeps going up and up, then I've  
24 got a problem with opioids that I have to manage.

15:48:06 25 And it also says to me as a pharmacist that

1 during these years and during the escalation of this  
2 opioid problem, nothing was done to stop that trending  
3 across the board, otherwise we would have seen some  
4 decreases.

15:48:22 5 Instead, it just kept increasing, and the  
6 trend was either ignored or people didn't pay any  
7 attention to it whatsoever.

8 Q. All right. When you were detailing this to us, you  
9 also said that this is something that was talked about  
15:48:35 10 within state boards.

11 Can you tell us what you meant by that?

12 A. The state Boards of Pharmacy became aware of this  
13 trend, this epidemic, they gave presentations about that.

14 Forty-eight of the states have their own  
15:48:54 15 state newsletter or a newsletter through NABP. There  
16 were articles in the state newsletters about opioids,  
17 articles about corresponding responsibility, so the state  
18 Boards of Pharmacy engaged in an information campaign to  
19 alert pharmacists to this and also the holders of those  
15:49:12 20 pharmacy registrations and licenses as well.

21 Q. And for a pharmacy to have their head of their  
22 division over these types of things looking carefully,  
23 would you expect that person to not only be zoomed in on  
24 this, but to actually be trying to take positive steps to  
15:49:36 25 stop it?

1 A. Yes, sir.

2 Q. The state board discussions, you added another one,  
3 and that was DEA actions.

15:49:47

4 Can you tell the jury what you mean by DEA  
5 actions?

6 A. Sure.

15:50:00

7 We talked earlier about the court cases,  
8 actions that the DEA took against some of the defendants,  
9 and they took them against pharmacies that the defendants  
10 managed where there were significant issues, significant  
11 problems.

15:50:12

12 And the DEA then put in certain  
13 requirements for the defendants to make sure that they  
14 were complying with what the Controlled Substances Act  
15 were and what the other requirements were that the DEA  
16 expected.

15:50:30

17 Q. All right. Sir, if we move on to opinion number  
18 seven, you express, "Each defendant failed to timely  
19 implement and apply necessary controlled substance  
20 diversion policies across its pharmacy stores."

21 Is that correct?

22 A. Yes, sir.

15:50:46

23 Q. And when you say, "Each defendant failed to timely  
24 implement and apply" these, what are you -- first of all,  
25 how can you form that opinion?

1 A. Based upon the information that I reviewed, sir.

2 Q. And what information is it you reviewed?

3 A. So as I mentioned earlier, some of the defendants  
4 had actions taken against them by the DEA as early as  
15:51:03 5 2009 and 2011.

6 And those actions included very specific  
7 requirements that they had to comply with because of  
8 their failure to comply with the requirements that were  
9 already in place.

15:51:17 10 If you look at the policies and procedures,  
11 many of those policies and procedures were not changed or  
12 weren't implemented until much later, 2013, 2015, and  
13 then if you think back to the chart, during that time  
14 period, the opioid crisis just kept increasing and more  
15:51:38 15 and more people were harmed or died because of that  
16 opioid epidemic during that time period.

17 Q. So when you say many changes were not made, are you  
18 saying for years later in some circumstances?

19 A. Yes, sir.

15:51:52 20 If the actions were --

21 MS. SULLIVAN: I'm sorry, I'm sorry to  
22 interrupt.

23 Your Honor, I'm going to object to the  
24 demonstrative because it says each defendant and then it  
15:52:02 25 talks about the DEA. It's objectionable.

1 THE COURT: Overruled.

2 I mean, he testified to it so it's

3 overruled.

4 BY MR. LANIER:

15:52:13 5 Q. Many -- many changes were not made for years later.

6 I wanted to make sure I understand. Did

7 you say years?

8 A. Yes, sir.

9 Q. Okay. Now, what about, for example, Ms. Sullivan

15:52:30 10 objected, she's with Giant Eagle.

11 I don't know that Giant Eagle was ever

12 subject to an action by the DEA for failure to comply, so

13 my question to you would be while we say, "Each

14 defendant" here, do you include Giant Eagle when you talk

15:52:46 15 about actions by the DEA?

16 A. I did not include Giant Eagle in that, but Giant

17 Eagle did have action taken against it.

18 MS. SULLIVAN: Objection, Your Honor.

19 THE COURT: Sustained.

15:52:58 20 BY MR. LANIER:

21 Q. Let's set aside anything else like that and just

22 answer my focused question.

23 You don't have -- you're not including

24 Giant Eagle on an action by the DEA for failure to comply

15:53:15 25 and a failure to execute changes for years later?





1 MR. LANIER: I'm not asking it as -- can we  
2 go to side-bar, Your Honor?

3 (Proceedings at side-bar:)

4 THE COURT: All right. No one has given me  
15:55:13 5 any enforcement actions by the Ohio Board of Pharmacy to  
6 review, no one has given me any documents in that respect  
7 and no one has suggested they are planning to use it so  
8 this is coming out of the blue, Mr. Lanier.

9 So I think before you use it, you've got to  
15:55:29 10 give it to me and give the defendants a chance to object  
11 and me to review it in due course.

12 MR. LANIER: Thank you, Your Honor.

13 That's exactly what I should have done and  
14 I apologize, and I will fix that and we'll deal with this  
15:55:42 15 in the morning.

16 THE COURT: Thank you.

17 MS. SULLIVAN: Your Honor, just one more  
18 thing.

19 I'm just concerned that this witness, and  
15:55:47 20 he was ready to blurt it out, there is an action by the  
21 Board. There is no admission. It's not in Lake and  
22 Trumbull County --

23 THE COURT: I said it may -- I mean we're  
24 not dealing with it now.

15:55:57 25 MS. SULLIVAN: Thank you.

1 (End of side-bar conference.)

2 BY MR. LANIER:

3 Q. All right.

4 Sir, I'd like to move on from this at this  
15:56:14 5 point in time. We may approach it tomorrow, okay? Put a  
6 place holder in your brain, all right?

7 Opinion number eight, you say, "Once  
8 controlled substance diversion policies were developed,  
9 each defendant failed to monitor and enforce the policies  
15:56:36 10 across its pharmacy stores."

11 Is that your opinion?

12 A. Yes, sir.

13 Q. And what is the basis for that opinion? If you  
14 have not already talked about it, save the Ohio Board  
15:56:53 15 stuff for later. What is the basis of your opinion?

16 Let me do it this way. I want to make sure  
17 we don't mess up.

18 Did you look at prescriptions for these  
19 defendants?

15:57:07 20 A. Yes, sir.

21 Q. You're from the midwest, not Ohio midwest but  
22 Illinois midwest, right?

23 A. Yes, sir.

24 Q. Okay. I'm from Texas, and in Texas we have this  
15:57:23 25 expression, "The proof is in the pudding."

1 Do you have that expression in the midwest?

2 A. Yes, sir.

3 Q. All right. So my question is did you actually look  
4 within the stores in these counties to see whether or not  
15:57:43 5 the defendants were properly monitoring and enforcing the  
6 policies across their pharmacy stores?

7 A. Yes, sir.

8 Q. Did you see the prescriptions that we were given?

9 A. Yes, sir.

15:57:55 10 Q. Did you see red flags in those prescriptions?

11 A. Yes, sir.

12 Q. Did you have a chance to look at the documentation?

13 A. Yes, sir.

14 Q. Did you have a chance to see if the due diligence  
15:58:09 15 was done and documented?

16 A. Yes, sir.

17 Q. Tomorrow morning, if -- unless we get to it today,  
18 but I reckon it will be tomorrow, are you going to be in  
19 a position, whenever I ask it, to walk through those and  
15:58:24 20 give us examples?

21 A. Yes, sir.

22 Q. Do those actual prescriptions, the histories you  
23 looked at, do they indicate that each defendant failed to  
24 monitor and enforce the policies across their pharmacy  
15:58:40 25 stores in Lake and Trumbull Counties?

1 A. Yes, sir.

2 Q. Is that an important thing that a defendant do?

3 A. Yes, sir.

4 Q. Why?

15:58:47 5 A. As we've mentioned several times, we're talking  
6 about people's lives here, and the importance of properly  
7 dispensing opioids.

8 So that's very important.

9 Q. All right.

15:59:05 10 Opinion number nine, "Each defendant  
11 implemented employee evaluation policies and performance  
12 metrics that impeded their pharmacists' efforts to comply  
13 with laws and regulations and meet standards of care."

14 Did I read your opinion correctly?

15:59:31 15 A. Yes, sir.

16 Q. Now, what do you mean when you say "Implemented  
17 employment evaluation policies"?

18 A. Those were the metrics and the metric policies we  
19 talked about earlier involving the time to fill the  
15:59:48 20 prescription, the wait time of customers, and then how  
21 bonuses were calculated for pharmacists based on  
22 prescription volume.

23 Q. And why do those employment evaluation policies  
24 make a difference in complying with laws and regulations  
16:00:12 25 and meeting standards of care from your perspective and

1 history?

2 A. It really touches on two points.

3 If those policies do not allow the  
4 pharmacist sufficient time to perform the  
16:00:25 5 responsibilities and conduct a DUR, that's one issue.

6 Q. Time out.

7 DUR?

8 A. Drug utilization review.

9 Q. Okay. That's the thing where you said inspect the  
16:00:37 10 prescription, do the due diligence and all of that?

11 A. Correct, sir.

12 Q. All right.

13 A. The second comment is if it distracts the  
14 pharmacist away from their primary goal of dispensing the  
16:00:49 15 appropriate medication for the patient and instead focus  
16 them on financial incentives or other metrics that again  
17 distract the pharmacist or take away from the  
18 pharmacist's responsibilities, that's not what those  
19 metrics should be doing.

16:01:05 20 Q. Can metrics be used to actually increase safety?

21 A. Yes.

22 Q. Can metrics be used to decrease safety?

23 A. Yes.

24 Q. Would it be appropriate for a national chain or a  
16:01:28 25 regional chain to monitor those things in their

1 pharmacies?

2 A. Yes.

3 Q. Now, you talk about employment evaluation policies  
4 and performance metrics.

16:01:42 5 Are performance metrics just more of the  
6 same?

7 A. What we've talked about, sir, yes.

8 Q. Okay. Yes.

9 That impeded the pharmacists' efforts. Let  
16:01:55 10 me ask you just as a practical issue, if you  
11 need -- would you get a little closer to the microphone  
12 or get the microphone a little closer to you. It works  
13 both ways.

14 A. Yeah. If I get too close, the Court Reporter can't  
16:02:14 15 hear, it's very garbled, so I'm trying to balance the  
16 two.

17 I apologize.

18 Q. Okay. No, it's not your fault.

19 You just got to balance them.

16:02:22 20 And I'll try and do better at listening and  
21 not yelling from my end.

22 Hold on, I'm reading where I was.

23 Okay. Let's get practical for a moment.

24 Let's say that I'm a pharmacist, okay? I don't see you.

16:02:53 25 I'm just -- got to hear.

1 A. Oh, I'm sorry.

2 Q. Yeah.

3 A. I was trying to imagine you as a pharmacist, so go  
4 ahead.

16:03:00 5 (Laughter.)

6 Q. That was a good one.

7 Let's say I'm a pharmacist, and let's say  
8 that I fill five normal prescriptions for every opioid I  
9 fill.

16:03:22 10 Are you with me?

11 A. You're filling five nonopioid prescriptions for  
12 every opioid?

13 Q. Yes. Yes. I'm sorry.

14 A. Okay.

16:03:30 15 Q. Z-Paks, Amoxicillin, birth control pills, whatever  
16 it may be -- not for me.

17 And so let's put it where the opioids are  
18 15 percent of what I do.

19 A. Okay.

16:03:50 20 Q. I'm filling.

21 And I'm told that I'm going to get bonused  
22 at the end of the year, and I'm going to be -- my job  
23 evaluation will be measured by how many prescriptions I  
24 fill, at least that's part of it.

16:04:09 25 A. Yes.



1 Q. All right. Now, if I've got an opiate in front of  
2 me to fill, OxyContin, and it's got some red flags, and  
3 I've got 15 minutes to get the prescription out but I've  
4 got a backlog of a bunch of other prescriptions I've got  
16:04:31 5 to fill, four or five for every opioid I've got to do,  
6 will I be pressed for time to resolve the red flags  
7 timely and keep my performance up?

8 A. I think just the description alone in that  
9 situation answers the question, and that's what  
16:04:53 10 pharmacists faced in these situations.

11 The opioid with red flags was going to  
12 require probably more than 15 minutes to resolve, but if  
13 I'm on a timetable where I have to dispense prescriptions  
14 in 15 minutes or I'm penalized and I have other  
16:05:11 15 prescriptions as well that are waiting on me to be  
16 dispensed because I don't have enough staffing to deal  
17 with it, that's exactly the impediment that I was talking  
18 about in my opinion.

19 Q. And did I dream up a fictionary scenario that could  
16:05:26 20 never happen, or is there realism in my example?

21 A. As a pharmacist who's been in that situation, and  
22 as the head of the National Association Boards of  
23 Pharmacy where pharmacists would complain to us all the  
24 time about that very situation and their concern for  
16:05:42 25 patient --

1 MR. MAJORAS: Objection.

2 Hearsay.

3 THE COURT: I'll sustain that objection.

4 BY MR. LANIER:

16:05:47 5 Q. Without saying what someone has said to you, just  
6 tell me whether or not that is a realistic situation?

7 A. Yes, it is.

8 Q. Okay. Let's go to opinion number 10.

9 By the way, before I leave opinion number  
16:06:15 10 nine, Ms. Singletary would like me to ask you about  
11 incentive plans based on customer satisfaction scores.

12 MR. LANIER: Your Honor, I do not know what  
13 that noise is but --

14 (Discussion had off the record.)

16:06:57 15 BY MR. LANIER:

16 Q. All right. Let me return to where we were for a  
17 moment.

18 So the question is if an incentive plan is  
19 based on a customer satisfaction score, how happy is the  
16:07:13 20 customer, is that another way that a measurement can be a  
21 good or a bad thing?

22 A. Yes, sir.

23 Q. Explain why, please.

24 A. Clearly besides being in the business of taking  
16:07:28 25 care of patients, the pharmacies are a business and their

1 customers have to be satisfied.

2 You can't treat your customers  
3 disrespectfully or make them wait unnecessarily hours and  
4 hours for prescriptions. There has to be that balance.

16:07:42 5 So knowing good customer satisfaction  
6 service helps the business improve. But when customer  
7 satisfaction surveys drive the professional decisions so  
8 when a physician writes a prescription for opioids for a  
9 patient because they're afraid they're going to get a bad  
16:08:02 10 patient rating and that's going to affect their Yelp  
11 review or their status at a hospital, and if a pharmacist  
12 then gets complaints from patients, he won't or she won't  
13 dispense an opiate prescription because of red flags.

14 And if those negative customer satisfaction surveys  
16:08:18 15 impact the pharmacist's performance, their position at  
16 the pharmacy, that's the bad part of customer  
17 satisfaction surveys and how they could be misconstrued.

18 Q. All right.

19 Now, in this regard, what I'd like to do is  
16:08:35 20 go to your opinion number 10.

21 Each defendants' local stores filled  
22 thousands of prescriptions presenting red flags without  
23 evidence of resolving those red flags.

24 Did I read that correctly?

16:08:54 25 A. Yes, sir.

1 Q. Now, in this regard, I'd like to first talk about  
2 some of the red flags that you have used and looked  
3 through in the process of working to that conclusion.

4 Okay?

16:09:09 5 A. Yes, sir.

6 Q. So I'll put them up here and have you explain them  
7 after we get them read into the record.

8 Red flag number one: "An opioid was  
9 dispensed to a patient who traveled more than 25 miles to  
16:09:27 10 visit the pharmacy. The distance here is calculated from  
11 the center of the patient's Zip Code to the center of the  
12 pharmacy's Zip Code."

13 Did I read that correctly?

14 A. Yes, sir.

16:09:43 15 Q. Why is that a red flag?

16 A. So the statement I will make with all the red flags  
17 is that there's been evidence to show that that's  
18 resulted in diversion and also other misuse of those  
19 prescriptions, but the rationale is based on logic as  
16:10:07 20 well as information.

21 Q. Explain the logic behind this.

22 A. So studies have shown that most patients, frequent  
23 pharmacies that are within three to five miles of their  
24 home or three to five miles within their office.

16:10:21 25 People want that to be a convenient service

1 and that's what's separated the chain pharmacies from  
2 independents, that convenience, having a pharmacy on  
3 every corner.

4 So for a patient to drive 25 miles to a  
16:10:35 5 pharmacy and pass other pharmacies on the way just  
6 doesn't make sense and has been one of the red flags that  
7 the DEA has identified as an indication that there could  
8 be a problem with this prescription.

9 Q. Do you remember where the DEA or when the DEA  
16:10:50 10 identified this red flag?

11 A. I --

12 Q. It's not a memory test.

13 A. It may have been in the *Holiday* test.

14 Q. All right. Whenever, or however it is, is this a  
16:11:04 15 common sense red flag?

16 A. Yes, sir.

17 Q. If you're a pharmacist who's practicing and you  
18 know you've got a responsibility with these opioids and  
19 you know you've got to be extremely careful and the  
16:11:21 20 company is giving you the time and opportunity, whether  
21 this has been identified as a red flag or not by the DEA,  
22 would you, as a pharmacist, see this as a concern?

23 A. Yes, sir.

24 As a pharmacist, you get to know the  
16:11:38 25 patients who frequent your pharmacy. You know the

1 prescribers in the area so you're familiar with those  
2 prescribers.

3 When a person presents a prescription to  
4 you and they're from 25 miles away, someplace that you've  
16:11:53 5 never seen prescriptions come from, or the questions that  
6 you begin to ask yourself are why is this patient coming  
7 to my pharmacy instead of other pharmacies that may be  
8 closer to the patient.

9 So it's a very common sense red flag.

16:12:05 10 Q. All right.

11 Now, your second red flag, number two, "An  
12 opioid was dispensed to a patient who traveled more than  
13 25 miles to visit their prescriber. The distance here is  
14 calculated from the center of the patient's Zip Code to  
16:12:29 15 the center of the prescriber's Zip Code."

16 Do you see that?

17 A. Yes, sir.

18 Q. Can you explain in common sense why you put that  
19 here as a red flag in your report?

16:12:43 20 A. Yes, sir.

21 Again, the studies have shown that people  
22 are going to utilize physicians or prescribers that are  
23 close and convenient for them.

24 Now, where the common sense comes in, that  
16:12:58 25 this red flag accounts for, is we're familiar with

1 universities or the Cleveland Clinic or specialists that  
2 may be 25 miles away from the patient's Zip Code and so  
3 as a pharmacist, I would look at that and be able then to  
4 resolve that red flag.

16:13:15 5 The number of miles, that is not a  
6 definitive indicator that says, "This prescription is a  
7 bad prescription and should not be filled."

8 It's an aid to the pharmacist who's doing  
9 all the things we talked about earlier, reviewing the  
16:13:31 10 prescription and such to say, "Hey, there's a red flag  
11 here; I'm wondering why this patient went to a prescriber  
12 in Florida when they live in Ohio" or "Why this patient  
13 went to a prescriber 50 miles away from their home when  
14 it wasn't a university center or it wasn't the Cleveland  
16:13:50 15 Clinic or it wasn't for a specialist."

16 Those are questions the pharmacist should  
17 ask and answers that they should document so that if all  
18 of the pharmacists are coming after that pharmacist and  
19 filling that prescription, I don't have to ask the same  
16:14:05 20 questions and put that patient through the same  
21 questions. I know that that red flag was resolved and  
22 I'm comfortable with dispensing it.

23 Q. By the way, are you saying that when you document  
24 properly resolving red flags, that that actually helps  
16:14:21 25 customer service later?

1 A. Undoubtedly, sir.

2 As a pharmacist, then, I don't subject that  
3 patient to the same questions they were probably already  
4 asked or should have been asked by the pharmacist before  
16:14:31 5 me who filled that prescription.

6 Q. All right. Let's continue.

7 Red flag number three, "The patient was  
8 dispensed opioid prescriptions with overlapping days of  
9 supply that were written by two or more prescribers."

16:14:50 10 First, would you explain what you mean by  
11 that?

12 A. So the common term that's used that's been again  
13 documented in DEA cases and part of the knowledge, part  
14 of what's communicated to a pharmacist is this is called  
16:15:07 15 doctor shopping.

16 So if you think about what are opioids  
17 primarily used for, they're supposed to treat severe  
18 pain. They're not supposed to be used for moderate pain.  
19 They are supposed to be the last resort after a patient  
16:15:21 20 has gone through therapy and tried other means like  
21 Ibuprofen or Advil or Tylenol, something to deal with the  
22 pain that doesn't escalate to an opioid.

23 So now you have a patient that comes into  
24 your pharmacy that has multiple prescriptions for opioids  
16:15:35 25 from different doctors. From a logic sense, that doesn't



1 make any sense. Why would a patient go to two different  
2 doctors to be treated for the same thing and get opioid  
3 prescriptions unless there was something else going on  
4 there that the pharmacist should look at and then  
16:15:52 5 document what they found.

6 Q. Could this be you called it doctor shopping.

7 Is that the same as a pill-mill doctor or  
8 is that different?

9 A. It could be the same, but it's different.

16:16:09 10 A pill-mill doctor is a doctor that's  
11 actually writing prescriptions for nonlegitimate  
12 purposes. They're simply being paid to write  
13 prescriptions to feed a person's drug habit or to divert  
14 medications.

16:16:23 15 It's clear from the evidence as presented  
16 on past pill-mills that patients waiting outside,  
17 patients taking scores of patients to those pill-mills,  
18 paying people for prescriptions, all sorts of practices  
19 that would define and distinguish a pill-mill from a  
16:16:41 20 traditional pharmacy.

21 Q. All right.

22 The third red flag -- I mean the fourth red  
23 flag that you -- wait, the third, is something written by  
24 two or more prescribers.

16:16:50 25 The fourth red flag reads almost the same,

1 but it says, "Patient was dispensed opioid prescriptions  
2 with overlapping days of supply at two or more  
3 pharmacies."

4 Pharmacies instead of prescribers.

16:17:06 5 Can you explain the difference between  
6 those two?

7 A. Sure.

8 This is pharmacy shopping.

9 So if I have a prescription for an opioid  
16:17:15 10 and I'm getting it filled at the pharmacy I always go to,  
11 why is there a need for me to go to another pharmacy and  
12 get the prescription where there's overlapping doses? So  
13 now my opioid prescription is still there, I'm still  
14 taking it, I still have some of it, but I get a  
16:17:33 15 prescription from another pharmacy for a duplication of  
16 that opioid therapy.

17 Are there some circumstances where that  
18 could happen? Sure. In my primary pharmacy, if they're  
19 out of the medication, they may direct me to another  
16:17:47 20 pharmacy, but in that case, my medication would be pretty  
21 much out or at the end and I needed a refill.

22 Or if there was a problem with the  
23 medication not being in that pharmacy or I couldn't get  
24 to that pharmacy, I went to the pharmacy that was near my  
16:18:03 25 home but now I went to the pharmacy that was at my work,

1 that would also be something that could be resolved and  
2 explain that.

3 But when this red flag manifests and  
4 manifests to a significant extent where there are more  
16:18:16 5 than just a few of these prescriptions, that says that  
6 the patient is going from pharmacy-to-pharmacy getting  
7 prescriptions filled for opioids just to increase the  
8 number of opioids that they have.

9 Q. Okay.

16:18:27 10 Let's go to red flag number five.

11 The patient was dispensed an opioid, a  
12 Benzodiazepine, and a muscle relaxer for overlapping days  
13 of supply."

14 Why is that a red flag?

16:18:48 15 A. Sir, as a pharmacist, you look at therapy and why  
16 certain medications are prescribed.

17 Based on my background as a pharmacist,  
18 there's no legitimate medical reason for these three  
19 drugs to be dispensed at the same time or for an  
16:19:10 20 overlapping day's supply, and the rationale for that is  
21 simple: When these three drugs are taken together, they  
22 create the same euphoria and same effect as taking  
23 heroin.

24 So what you've actually done here now is  
16:19:26 25 dispensed prescription drugs instead of heroin, and that

1 would be a significant red flag that every pharmacy  
2 should know and should question before they dispense.

3 Q. Well, how do you know if you're just dispensing the  
4 opioid and someone else dispensed the Benzodiazepine and  
16:19:46 5 someone else dispensed the muscle relaxer?

6 A. Again, we talked about the corporate responsibility  
7 and the data that the corporations have.

8 Within my pharmacy or my chain pharmacy, I  
9 may be able to look at that screen or that patient  
16:20:02 10 profile and see if they were getting it filled at other  
11 chains in my pharmacy.

12 I may or may not.

13 I may not have time to do that, and that's  
14 something that the corporation should present the type of  
16:20:15 15 information that the pharmacist should be made aware of  
16 so that the pharmacist knows that that patient has been  
17 going from pharmacy-to-pharmacy within my chain.

18 If they're going to a pharmacy outside of  
19 my chain, the only way I'm going to know that is I have  
16:20:30 20 access to the Prescription Drug Monitoring Program at  
21 work that shows me every pharmacy, every doctor that that  
22 patient has gone to for controlled substances.

23 And again, that's another tool that the  
24 corporation needs to make available to pharmacists so  
16:20:44 25 they could deal with these situations that they can't

1 deal with as a pharmacist practicing by themselves at  
2 that individual pharmacy.

3 Q. And if a pharmacist finds this red flag, should a  
4 pharmacist document it?

16:20:59 5 A. The requirements are quite clear.

6 Whenever a pharmacist feels that that  
7 prescription should not be dispensed or there are red  
8 flags that need to be resolved, the pharmacist should not  
9 resolve -- should not dispense that prescription until  
16:21:14 10 the red flags are resolved.

11 If they suspect it's diversion, the  
12 pharmacist has an obligation to call authorities, local  
13 law enforcement or DEA, and alert them to that situation.

14 That is very specific in the requirements.

16:21:27 15 Q. Wait a minute.

16 You're saying if a pharmacist or a pharmacy  
17 store believes there is diversion going on, that they  
18 have an obligation by your understanding of the law to  
19 contact the authorities?

16:21:46 20 A. As a pharmacist that's my understanding of what the  
21 requirements are, that if I suspect diversion, and I've  
22 tried to resolve those red flags and my resolution or my  
23 analysis comes back and tells me that this may be  
24 diversion, then I have an obligation to notify  
16:22:02 25 authorities.

1 Q. Okay. Would it be a good company policy if the  
2 jury were to hear that a company did not notify  
3 authorities because they thought the DEA didn't want them  
4 to?

16:22:19 5 Would that be a good thing or proper under  
6 your understanding of the law?

7 A. I'm not sure what DEA you're referring to, but I've  
8 worked with the DEA for 30 years and I've never heard  
9 them say they didn't want to hear about diversion so I'm  
16:22:33 10 not sure what that is.

11 But it clearly in my opinion would not be a  
12 good policy.

13 Q. So for a company to teach their pharmacists don't  
14 report a bad doctor, don't report a suspicious diverted  
16:22:48 15 order because the DEA doesn't want to hear about it, that  
16 would be contrary to the way you believe a company should  
17 respond under the law?

18 A. Yes, sir.

19 And also how a pharmacist should practice.

16:23:01 20 Q. All right. If you look at number six of your red  
21 flags, "Patient was dispensed an opioid" -- in that last  
22 question, I asked you about documentation and you did not  
23 answer about documentation.

24 I didn't give you a chance. I apologize.

16:23:32 25 Go back and tell us, please, why is

1 documentation important on something like the three  
2 different drugs being issued at the same time?

3 A. Again, as we've talked a few times this afternoon,  
4 if a pharmacist identifies red flags, then those red  
16:23:53 5 flags should be documented.

6 And if the pharmacist resolves those red  
7 flags, that documentation should be resolved -- should be  
8 documented so that the pharmacist or Board of Pharmacy or  
9 DEA inspector can understand what happened and see that  
16:24:05 10 the pharmacist acted appropriately.

11 In a situation like this where you have  
12 three drugs that are being dispensed and the only real  
13 purpose in my experience has been to provide a  
14 heroin-type effect, that's a very serious consideration.  
16:24:21 15 And so for the pharmacist not to document that, puts the  
16 pharmacist at risk. And if they dispense the  
17 prescription, then the patient clearly is at risk.

18 And if they haven't notified law  
19 enforcement or authorities as they're obligated to do so,  
16:24:37 20 they just compounded the situation and made it even worse  
21 than it was.

22 Q. Okay. Number six, "Patient was dispensed an  
23 opioid, a Benzodiazepine, and a muscle relaxer on the  
24 same day and all the prescriptions were written by the  
16:24:57 25 same prescriber."

1 Similar, yet a different red flag.

2 Please explain why that is important.

3 A. And I apologize to the jury, you may know this, I  
4 didn't mention before that when we refer to  
16:25:14 5 Benzodiazepines, we're talking about Valium or Xanax,  
6 those medications, and you probably are aware of that.  
7 So I just wanted to make sure we are on the same page.

8 Q. Yeah, in fact, hold on.

9 Let's do this more carefully and that's my  
16:25:27 10 fault, not yours.

11 A Benzodiazepine, Valium or what was the  
12 other one?

13 A. Xanax.

14 Q. Is that X-A or Z-A?

16:25:34 15 A. X-A.

16 Q. And what -- take away the other drugs.

17 What's Valium and Xanax typically used for?

18 A. So these are what they call central nervous system  
19 depressants and they're also used as anti-anxiety drugs  
16:25:53 20 so a person may be anxious, a person that needs to relax,  
21 they'll prescribe Xanax or prescribe Valium.

22 People that are very concerned about  
23 flying, sometimes they'll prescribe Xanax so that person  
24 is able to get through the flight and not suffer anxiety.

16:26:12 25 Q. Colloquially in Texas, is this what we call a chill



1 pill, just kind of chillax?

2 A. I guess, yes, sir.

3 Q. Okay.

4 A muscle relaxer, give us typical muscle  
16:26:23 5 relaxer prescriptions.

6 A. So the names that most people probably know it by  
7 would be Soma or Flexeril.

8 The chemical name is carisoprodol and what  
9 a muscle relaxer does is if somebody has a back injury or  
16:26:39 10 someone is -- it helps that muscle relax so the tension  
11 and that pain is relieved somewhat.

12 Q. All right. You said Flexeril was the first name.

13 You used Soma, S-O-M-A?

14 A. S-O-M-A, yes, sir.

16:26:51 15 Q. All right. That just helps the Court Reporter if  
16 she's got that in her machine, so she'll thank you.

17 So if someone's dispensed an opioid, an  
18 anti-anxiety pill, and a muscle relaxer on the same day,  
19 and all these prescriptions are written by the same  
16:27:09 20 prescriber, why is that a red flag?

21 A. So three issues on this medication.

22 The first one is what we've talked about  
23 with the red flags. There has been documented incidents  
24 and DEA actions where these two drugs were dispensed  
16:27:29 25 inappropriately and created problems with diversion and

1       prescriptions being dispensed for illegitimate purposes.

2               So that was the basis for identifying this.

3               The second is since they're both

4       depressants, they depress the nervous system, they also

16:27:48 5       depress the same controls over breathing. So now you've

6       got two drugs that are going to depress a person's

7       breathing or really slow down their central nervous

8       system. So if it's not carefully monitored, it could do

9       damage to that patient either by stopping their breathing

16:28:06 10       or causing them to get so lethargic, that they lose

11       control or simply pass out.

12               The third consideration is this isn't a

13       hundred percent wrong every time it's prescribed. There

14       could be situations where I've been involved in a car

16:28:24 15       accident and I can't sleep at night and so I need the

16       pain medication, but I may need the Benzodiazepine, the

17       Xanax, the Valium, to help me sleep so I could rest up.

18               But in those situations, the prescriptions

19       would be written for a very limited time period, and

16:28:47 20       again the key to everything, as we keep coming back to,

21       is the pharmacist documenting that circumstance.

22               So the next pharmacist knows that it's not

23       abuse, and that the patient's not at risk; that this is

24       what's really prescribed, and it's being monitored for

16:29:03 25       that patient.

1 Q. All right. I think it's possible that I've read  
2 this in such a way that I've confused a couple of your  
3 red flags.

4 So I want to make sure that I've got it  
5 correct.

16:29:14

6 Red flag number six, I think I failed to  
7 say, "Opioid, Benzodiazepine, and a muscle relaxer," in  
8 other words, the same three drugs, but instead of being  
9 just prescribed for overlapping days, this is those three  
10 being written by the same prescriber.

16:29:31

11 Should a prescriber, based upon your  
12 understanding as a pharmacist, know those three drugs  
13 react the way you've said they are?

14 A. Yes, sir. And that was my error. I didn't see the  
15 opioid -- I mean I didn't see the muscle relaxer in the  
16 second red flag.

16:29:48

17 Q. Okay. So let's go back to these three and we'll  
18 look at the two in a moment in the next red flags.

19 But these three, if a doctor is -- the same  
20 doctor's writing a prescription for a patient on all  
21 three of these drugs, is it important that the doctor  
22 himself or herself be documented as someone who's done  
23 this?

16:30:03

24 A. Again, the documentation should address the fact  
25 that these three drugs should not be prescribed.

16:30:22

1                   And if there's a reason that I can't think  
2 of for them to be prescribed by the same prescriber, that  
3 should be documented and there should be something to  
4 substantiate that in the record.

16:30:35 5       Q.     All right. Now, let's go to the dual drugs that  
6 you thought the last one showed.

7                   This is red flag number seven. If a  
8 patient was dispensed an opioid and a Benzodiazepine  
9 within 30 days of one another, it's a red flag?

16:30:57 10     A.     Yes, sir, for all the reasons that I spoke of  
11 earlier.

12     Q.     That's good. We'll just say, "Remember earlier."

13                   And again, does that mean categorically  
14 that it's wrong?

16:31:12 15     A.     Not with these two -- this combination, sir, no.

16     Q.     Okay. With the three combo, do you believe it's  
17 categorically wrong?

18     A.     Yes, sir.

19     Q.     With the two combo, is it still a red flag that you  
16:31:24 20 should check?

21     A.     Yes, sir.

22     Q.     Why?

23                   In other words, what do the two do, the  
24 three give you the euphoria of heroin, what do the two do  
16:31:35 25 in tandem that would make someone want to take them for

1 diversion reasons?

2 A. Again, what I mentioned earlier, they both depress  
3 the central nervous system and so somebody to use the  
4 technical term that Mr. Lanier used, they wanted to chill  
16:31:51 5 out and have that chill and that type of sensation or  
6 feeling, that's why you would take both medications  
7 together.

8 There wouldn't be a medical reason to do  
9 that. It's more of affecting how you feel and a  
16:32:02 10 euphoria, trying to get that high, which would be a low,  
11 that people would abuse these two drugs together for.

12 Q. All right.

13 Number eight seems to be the same as number  
14 seven, except you've got it written by the same  
16:32:15 15 prescriber, and I want to emphasize a point with you on  
16 this.

17 Should pharmacists start -- should  
18 pharmacists have been on the lookout for doctors who  
19 weren't prescribing properly?

16:32:35 20 A. As a pharmacist, you know that and you look at  
21 that, and you keep track of those doctors that you  
22 suspect may not be prescribing appropriately.

23 Q. Okay. And you talked about how there are good  
24 lawyers and bad lawyers.

16:32:49 25 You talked about how there are good

1 pharmacists, bad pharmacists, good techs, bad techs.

2 I think we've seen indications that 99  
3 percent of doctors are just phenomenal ladies and men,  
4 but that doesn't mean that there's not one out of a  
16:33:07 5 hundred that may not be up to snuff?

6 A. Yes. I think with all the examples you gave as  
7 with society, we always kind of throw out percentages or  
8 try to quantify who -- how many bad or good people there  
9 are.

16:33:25 10 With doctors, with pharmacists, probably  
11 the overwhelming majority are practicing the way they  
12 should.

13 When you look at some of the societal  
14 problems, people always say it's two percent that are  
16:33:38 15 creating all the trouble for the 98 percent or it's the  
16 one percent, so the percentage becomes less important  
17 than the concept. And the concept is that overall, the  
18 overwhelming majority of practitioners, pharmacists,  
19 doctors, are probably trying to do the right thing.

16:33:54 20 But that percentage of people that are  
21 doing the bad thing, whether it's 0.1 percent or 10  
22 percent, they're the ones that we should be addressing  
23 and they're the ones, almost 900,000 people have died  
24 from opioid overdoses.

16:34:12 25 Q. And in that regard, sir, do the pharmacists, if

1 they are properly trained and equipped and given the time  
2 to, and then do, the right thing on these prescriptions,  
3 are they better able to detect which of those doctors are  
4 bad doctors?

16:34:29 5 A. Yes, sir.

6 Q. And is it important to do that, that -- no.

7 In order to do that, is it important that  
8 documentation be right?

9 A. Yes, sir.

16:34:39 10 Q. How is documentation important on this subject of  
11 identifying those few bad doctors that are the trouble?

12 A. Sure.

13 The other side of the issue with the opioid  
14 crisis or epidemic is patient access.

16:34:53 15 People should have access to pain  
16 medications when that pain is legitimate and that  
17 prescription is legitimate.

18 That's why documenting bad doctors versus  
19 good doctors is important. If you misappropriately  
16:35:07 20 designated a good doctor a bad doctor, then those  
21 patients aren't going to get medications that they should  
22 receive and should have access to.

23 So documenting that, doing your due  
24 diligence, is very, very important for patients and  
16:35:20 25 doctors to make sure that the right decisions are made

1 and patients have access to their medications.

2 Q. All right. I've taken some depositions in this  
3 case. You know what a deposition is, right?

4 A. I -- yes, sir.

16:35:32 5 Q. And I've taken some depositions of some of the  
6 defendants in this case, and I want to ask you in that  
7 reference to your answer to that last question this:

8 If someone within the hierarchy of the  
9 company says that it's not good for pharmacists to  
16:35:52 10 question customers because it's just going to upset the  
11 customers and embarrass them and make them feel like  
12 they're drug runners or something, do you believe that  
13 that should stop a pharmacist from determining these red  
14 flags through whatever means necessary?

16:36:14 15 A. No, sir.

16 Q. Why?

17 A. The pharmacist is supposed to be a professional,  
18 and one of the things the pharmacist must do is respect  
19 that patient.

16:36:26 20 Addiction is a disease. It's not a  
21 judgment about that person. So a pharmacist has to know  
22 or he should know how to ask patients the right questions  
23 to make sure that the prescription that is being  
24 dispensed is appropriate and safe for them.

16:36:44 25 To anger the patient by asking questions



1 that accuse them of being a drug user or abusing drugs is  
2 not the appropriate approach, but to say don't ask  
3 patients questions about their medications is also not  
4 the right approach.

16:36:58 5 It has to be that balance to resolve that  
6 red flag and respect that patient. If that patient needs  
7 that medication or needs treatment, that's what the  
8 pharmacist is there for.

9 Q. By the same token, if it's been suggested to the  
16:37:15 10 jury that the AMA has said you should never question a  
11 doctor about the way the doctor writes a prescription, is  
12 that consistent with your obligation that you see on a  
13 pharmacy or a pharmacist?

14 A. It's in conflict with what a pharmacist should do  
16:37:33 15 and the background behind that, the New Jersey Medical  
16 Society raised that issue in a resolution at one of the  
17 AMA annual meetings a few years ago and it had a  
18 resolution, a nonbinding resolution adopted by the AMA  
19 House of Delegates that said pharmacists should not  
16:37:50 20 question physicians and they should simply fill the  
21 prescriptions as the physician wrote them.

22 As I mentioned earlier, we had a  
23 stakeholder task force. The AMA was involved in that  
24 task force and worked with us and the chain pharmacies  
16:38:05 25 that sat on the task force to clarify that that's not

1 what the overwhelming majority of physicians felt about  
2 pharmacists' involvement. In fact, the AMA and the other  
3 groups recognized that the pharmacists on the health care  
4 team are critical and beneficial to patient safety.

16:38:23 5 Q. All right. I'd like to go to your next red flag,  
6 red flag number nine.

7 "The patient was dispensed two short-acting  
8 opioid drugs on the same day."

9 Why is that a red flag?

16:38:44 10 A. Again, if opioids are prescribed appropriately, you  
11 wouldn't need two short-acting opioids.

12 What opioids should be prescribed for is  
13 break through pain. Unless you're a cancer patient,  
14 unless you're somebody that's suffering significant pain  
16:39:01 15 due to a traumatic injury or some other condition, and  
16 again, it goes back to what we keep saying that would be  
17 documented.

18 Studies are shown that using Ibuprofen,  
19 Advil and Tylenol have more pain management than opioids.  
16:39:20 20 And the reason people feel good with opioids is because  
21 it causes a bit of euphoria, and they believe then that  
22 the pain is lessened, when the pain may not have been  
23 lessened or it would have been better treated with  
24 Naprosyn, Elavil, any of those Ibuprofens and Tylenol.

16:39:39 25 So to give two short-acting opioids, just

1 from a clinical perspective, doesn't make clinical sense  
2 and again puts the patient at risk.

3 Q. Number 10 -- by the way -- no.

4 Number 10, "Patient was dispensed an opioid  
16:39:59 5 prescription of over 200 MMEs per day before 2018 or over  
6 50 MMEs per day after January 1st, 2018."

7 First of all, is that your opinion?

8 A. Yes.

9 Q. That that's a red flag?

16:40:17 10 A. Yes, sir.

11 Q. And in that regard, the jury heard from Dr. Lembke  
12 what a MME is, but I'd like for them to hear it from a  
13 pharmacist who's a drug specialist.

14 What's MME?

16:40:31 15 A. The easiest way to describe it is it's really the  
16 amount of opioid that a person would be taking and that's  
17 just a measure of that.

18 Some of them are measured in milligrams, 30  
19 milligrams, 80 milligrams, this actually is the amount  
16:40:50 20 that will get into your bloodstream, into your body, in  
21 terms of Morphine milligram equivalents. It's similar to  
22 what -- how much Morphine you can take if you took that  
23 strength of that opiate.

24 Q. All right. With that understanding, why is  
16:41:03 25 dispensing an opioid prescription of over 200 MMEs per

1 day before 2018 or 50 after 2018, that seems goofy to me?

2 A. So as all of us are probably tired of the pandemic  
3 and probably know more now about the CDC than we ever  
4 wanted to know, the CDC releases guidelines on what the  
16:41:26 5 appropriate amount of opiates should be.

6 The higher the dose of the opioid, the  
7 higher the risk to the patient overdosing, stopping  
8 breathing, or having other serious consequences.

9 So when you prescribe somebody a dose of  
16:41:41 10 over 200 MMEs of opioids, that's a significant dose. The  
11 best way I can say is like shooting somebody with an  
12 elephant gun and literally knocking that person out.

13 So prior to 2018, the CDC recommendation  
14 was 200 milligrams, 200 MMEs. That shouldn't be.

16:42:03 15 Once they saw the effect that was  
16 happening, how it was causing addiction and other  
17 problems of abuse, they then revised the guidelines, like  
18 they did with the vaccines, like they did with mask or no  
19 mask --

16:42:20 20 COURT REPORTER: With what?

21 A. Mask and no mask to deal with the pandemic. So  
22 when the CDC gets new data, new information, they revise  
23 the guidelines.

24 So in 2018, they said, "Whoa, 200 MMEs was  
16:42:32 25 way too much. We're saying now that the prescribing

1 guidelines should be 50 MMEs per day."

2 Q. All right. Red flags, we've got just about six  
3 more to get through.

4 Red flags, number eleven.

16:42:51 5 "Patient was dispensed an opioid

6 prescription of over 200 --

7 A. I think it's --

8 Q. Yeah, did I --

9 A. I think the 50 was incorrect. It should be the 90.

16:43:06 10 Q. Should be the 90. So I need to go back to number

11 10 and fix that to 90.

12 A. 90.

13 Q. And I'll take responsibility for that.

14 And so your answer that you just gave is

16:43:18 15 the answer for number 11.

16 A. Yes, sir.

17 Q. All right.

18 Number 12, "An opioid was dispensed to at

19 least four different patients on the same day and the

16:43:32 20 opioid prescriptions were for the same base drug,

21 strength and dosage form and were written by the same

22 prescriber."

23 Explain that one, please.

24 A. So if we look around the room, each one of us is

16:43:53 25 different in so many ways.

1                   So what you have here is a doctor making a  
2                   determination, if you look at it from simply prescribing,  
3                   saying that every person is exactly the same.

4                   We have the same characteristics, we have  
16:44:13 5                   the same disease, we have the same allergies, and we're  
6                   all taking the same medications outside of what I'm going  
7                   to prescribe now.

8                   And so I'm going to give every single one  
9                   of us the same medicine, the same dose, the same  
16:44:31 10                  strength, and the same quantity.

11                  That makes no logical sense whatsoever  
12                  because somebody may have diabetes, somebody may be  
13                  allergic to a particular medication, there's no way  
14                  multiple patients should be getting the same medications  
16:44:47 15                 time after time.

16                  It's something we'll talk a little bit more  
17                  in terms of prescribing.

18                  Now, are there situations where certain  
19                  practitioners may prescribe similar medications for  
16:45:00 20                 similar patients? If a dentist is treating patients for  
21                  toothaches and that rationale is, "I'm going to give that  
22                  person an antibiotic and enough pain medication to get  
23                  them through what might be the particular procedure,"  
24                  there may be some similarity there.

16:45:18 25                 An orthopedic surgeon that deals with hip

1 replacements or other similar things, there will be some  
2 similarities there.

3 But to give every single patient the same  
4 medication, the same strength, the same quantity, either  
16:45:32 5 says that everyone's the same, that prescriber is lazy,  
6 the prescriber is not taking into account that those  
7 medications could cause harm to that person because that  
8 person is different from the other patients.

9 Q. So let's say I'm working as a pharmacist at a  
16:45:50 10 drugstore and there's a line of people who are coming in  
11 with the same prescription from the same doctor for the  
12 same dosage of the same pill, and I can look at them and  
13 I can see they're different. Should that alert a red  
14 flag in my brain?

16:46:06 15 A. Yes.

16 And again, it's a red flag that needs to be  
17 resolved, and to ask the questions we just talked about.  
18 "Doctor, why are these patients receiving the same  
19 prescriptions? Doctor, this patient has this underlying  
16:46:19 20 disease, this underlying condition; they shouldn't be  
21 receiving these same medications."

22 Resolving the red flags and then  
23 documenting that resolution.

24 Q. All right. And red flag 13's very similar to red  
16:46:32 25 flag 12, but look at red flag 13: "An opioid was

1 dispensed to at least three different patients within an  
2 hour and the opioid prescriptions were for the same base  
3 drug, strength, and dosage form and were written by the  
4 same prescriber."

16:46:53 5 Same reasons or is there anything to add to  
6 this?

7 A. There's a little bit to add to this. It's probably  
8 an expression that's used in Texas but no one in Chicago  
9 would ever use it.

16:47:04 10 It's wearing a belt with suspenders because  
11 we wouldn't do that, but anyway --

12 Q. Wait. Wait. Wait.

13 A. What this is saying is you've got three patients  
14 that were seeing a physician within an hour, and they got  
16:47:22 15 the same prescriptions.

16 How much time did that physician spend with  
17 those patients and why; again, are they getting the same  
18 medications?

19 So it's another way to look at the red  
16:47:33 20 flag, to resolve the red flag, and work back to the point  
21 where you can say dispense or not dispense because the  
22 red flag has been resolved or not been resolved.

23 Q. Okay. That makes sense.

24 So it's the idea of if a doctor is seeing  
16:47:47 25 patients that fast (indicating), writing the exact same



1 prescription and it's an assembly line, bells should go  
2 off?

3 A. That would be probably or could be a pill-mill and  
4 how a pill-mill would operate.

16:48:05 5 Q. And it may be legitimate?

6 A. Yes.

7 Q. But it may be a pill-mill?

8 A. Yes, sir.

9 Q. All right.

16:48:13 10 Red flag 14, "An opioid prescription was  
11 refilled more than five days before the patient's  
12 previous prescription should have run out."

13 Why is that a red flag?

14 A. So again, we can argue about the number, some  
16:48:31 15 people may say why five days, why three days, why not 10  
16 days.

17 The concept here is if a patient's on a  
18 medication, and particularly an opioid, they shouldn't be  
19 getting it refilled early because if they're trying to  
16:48:45 20 stockpile the medications and do themselves harm, that  
21 would be a concern. If they're getting it early because  
22 they're taking it more than they should, that should be  
23 communicated to the doctor because whatever therapy the  
24 patient is on now is not working. That patient's pain  
16:49:02 25 hasn't gone away; it's gotten worse.

1 And also with insurance, insurance won't  
2 pay for prescriptions that are filled early. And so  
3 it's -- the insurance companies themselves are saying  
4 this is a red flag or something we'd want to look at  
16:49:16 5 because we're not going to pay for that duplicate  
6 therapy.

7 And again, within the policies and  
8 procedures of the defendants, this was a red flag. Maybe  
9 the time period varied, but again, as we said, the red  
16:49:28 10 flags are not stop signs for the pharmacists; they are  
11 yellow signs. They say proceed with caution.

12 This is just another way to help the  
13 pharmacists to look at this prescription and say, "Whoa,  
14 five days early, maybe three days, whatever, let's take  
16:49:45 15 another look at this red flag and see what's going on."

16 Q. All right. I want to hone in on what you just  
17 said.

18 You said it's not a stop sign; it's a  
19 yellow caution sign, "proceed with caution"?

16:49:55 20 Are you saying it's okay for a pharmacist  
21 to dispense a drug with a red flag without chasing down  
22 the red flag first to see if it's valid or not?

23 A. No. No prescription should be dispensed unless  
24 every red flag has been resolved.

16:50:10 25 The "proceed with caution" means don't just

1 fill this prescription; you've got to spend some extra  
2 time resolving this red flag.

3 Q. So at least you stop sending the drug out until you  
4 resolve the red flag.

16:50:23 5 Is that fair?

6 A. Yes, sir.

7 Q. All right. Red flag number 15 and 16, and then  
8 we've gotten through those that you've identified that  
9 will be relevant to your testimony tomorrow morning.

16:50:38 10 Number 15, "A patient was dispensed more  
11 than 210 days of supply of all opioids combined in a  
12 six-month period."

13 Explain to us why that's a red flag,  
14 please.

16:50:56 15 A. As we talked earlier, opioids are supposed to be  
16 for short-term use. They're very addictive and people  
17 can become addicted to them very easily and they are  
18 easily abused.

19 The longer you are on opioids, the greater  
16:51:13 20 the chance of you becoming addicted to opioids.

21 So for a pharmacist to see this amount of  
22 opioids, a 210-day supply of opioids, again without  
23 adequate documentation saying this is a terminally ill  
24 patient or this is a cancer patient or this is a patient  
16:51:29 25 that's in some sort of intractable pain, that's been

1 documented and there's other evidence in that patient  
2 profile, that's putting the patient at severe risk and  
3 it's another red flag that the pharmacist needs to  
4 resolve.

16:51:43 5 Q. All right. I want to try and get through these.

6 Opinion -- I mean red flag 16, "A patient  
7 was dispensed an opioid and paid cash."

8 Why is that a red flag?

9 A. The industry standards and information from the  
16:52:07 10 industry show that about 90 to 95 percent of all patients  
11 have some sort of insurance coverage for their  
12 medications.

13 So as a pharmacist, if I have a patient  
14 coming in with an opioid prescription, and that person  
16:52:23 15 has insurance coverage for their other medications but  
16 they want to pay cash for the opioid, that's a red flag.

17 It's telling me there's something going on  
18 here again with this prescription and I need to resolve  
19 that red flag. Why would you pay money out of your  
16:52:40 20 pocket if you have insurance coverage, and if you don't  
21 have insurance coverage, which again could be a  
22 legitimate exception, it's again back to what we've been  
23 talking about, document that.

24 The patient between jobs or patient doesn't  
16:52:54 25 have insurance, had to pay cash for this prescription, or

1 this medication wasn't covered by their plan. As simple  
2 as that. So the pharmacist coming afterwards doesn't  
3 have to question that patient again.

4 Q. All right. And, Doctor -- Doctor --

16:53:09 5 -- Mr. Catizone, to make sure that we've got our record  
6 complete on this, I need to ask you this question.

7 "Red flags" -- this is an opinion you've  
8 put in your report on red flags.

9 "Red flags are warning signs and can also  
16:53:25 10 indicate activities are occurring outside the usual and  
11 customary scope of pharmacy practice, activities that are  
12 more likely to include abuse, diversion, and fraudulent  
13 acts."

14 Can you explain what you meant by that?

16:53:44 15 A. As we've talked, and thank you for listening the  
16 whole afternoon, red flags are exactly what they say, a  
17 warning sign, a proceed with caution for the pharmacist  
18 on three levels.

19 One, that medication could be dangerous to  
16:53:58 20 the patient. So as a pharmacist, I want to make sure  
21 it's the right medication, the right dose, and it's not  
22 going to harm the patient.

23 Second, it could be an indication to me  
24 that my patient's suffering from the disease of addiction  
16:54:11 25 and needs help so I need to work with that patient and

1 talk with that patient.

2 Or, third, I've got a drug-seeker, somebody  
3 who is abusing medications, selling medications,  
4 diverting medications and those medications are doing  
16:54:27 5 much more harm than I ever want to see happen.

6 And so, therefore, I've got to look at  
7 those red flags, particularly if a prescription has  
8 multiple red flags, and go through each one of those to  
9 see what is happening and then document whatever result  
16:54:42 10 I've found.

11 Q. In this regard, I need to ask you about two words  
12 or one word and one phrase.

13 The word "Foreseeable," based upon your  
14 experience and expertise, is it foreseeable that if these  
16:54:57 15 red flags exist and are not resolved and documented, is  
16 it foreseeable that it would lead to abuse, diversion,  
17 and fraudulent acts?

18 A. Yes, sir.

19 Q. Is it foreseeable to a pharmacy as well as a  
16:55:18 20 pharmacist that unresolved red flags like you've  
21 discussed with dispensing can lead to diversion and would  
22 lead to diversion?

23 A. Yes, sir. We talked earlier about the boring part  
24 of the Controlled Substances Act, which is closed system.

16:55:44 25 When the closed system is breached by the

1 things we just talked about, those drugs leave the closed  
2 system and get outside of that system and get into the  
3 hands of people that shouldn't be taking that medication.

4 So yes.

16:55:58 5 Q. All right.

6 MR. MAJORAS: Objection. *Daubert* ruling.

7 THE COURT: Overruled.

8 BY MR. LANIER:

9 Q. And then, my next question on a word or phrase is  
16:56:13 10 "Knowingly dispensing."

11 From your understanding of the law that  
12 says that a pharmacist shall not knowingly dispense a  
13 drug, do pharmacists know about red flags?

14 A. Yes, sir.

16:56:31 15 Q. If a pharmacist dispenses a drug without  
16 resolving -- let me start between.

17 If a pharmacist dispenses an opiate without  
18 resolving an apparent red flag, is that knowingly  
19 dispensing one in violation of the responsibilities under  
16:56:55 20 the CSA as you understand them?

21 MR. MAJORAS: Objection. Legal conclusion.

22 THE COURT: I'll sustain. I'll sustain  
23 that one.

24 BY MR. LANIER:

16:57:15 25 Q. Do you understand that pharmacists know the

1 importance of resolving red flags before dispensing an  
2 opiate?

3 A. Yes, sir.

4 Q. And do the pharmacies, as well as the pharmacists,  
16:57:30 5 based upon your experience, know the importance of the  
6 necessity of resolving red flags before dispensing?

7 A. Yes, sir.

8 Q. That's not a novel idea?

9 A. No, sir.

16:57:58 10 Q. All right. In that regard, you have also said  
11 that -- about red flags, that, "Determination of whether  
12 a prescription issued for a controlled substance is valid  
13 and legitimate requires systems and actions to recognize,  
14 investigate, and resolve signs of a prescription's  
16:58:27 15 invalidity, signs that are red signs."

16 Can you explain what you mean by that?

17 A. Yeah, that's really the basis of the corresponding  
18 responsibility and the need for documentation, that the  
19 systems and the pharmacists have to identify red flags,  
16:58:46 20 resolve those red flags, because if a prescription has a  
21 red flag, one of the warning signs it is pointing to is  
22 this may not have been issued for a legitimate medical  
23 purpose and, therefore, that pharmacist has to resolve  
24 that and establish that it was issued for a legitimate  
16:59:02 25 medical purpose and that the prescription is legitimate



1 and valid and then document that and then dispense.

2 Q. And in that regard, you give another opinion which  
3 is eleven, which is closely related, and you say, "Each  
4 defendant and its pharmacists have a corresponding  
16:59:19 5 responsibility to only fill prescriptions for controlled  
6 substances that are issued for a legitimate medical  
7 purpose by an individual practitioner acting in the usual  
8 course of her or his professional practice."

9 Is that your opinion?

16:59:36 10 A. Yes, sir.

11 Q. Explain what you mean by that, please.

12 A. All the things we talked about earlier, but this is  
13 a little bit more specific saying that you would not want  
14 a dentist prescribing opioids for a cancer patient. That  
16:59:50 15 would be outside their scope of practice.

16 So a pharmacist also has to look at what  
17 that scope of practice of that prescriber is and make  
18 sure, as part of the determination of whether it's  
19 legitimate, that that's one of the things they look at as  
17:00:08 20 well.

21 Q. All right. Opinion number 13, and I -- no, I  
22 skipped 12.

23 Let's go to opinion number 12.

24 You've got, on opinion number 12, you've  
17:00:28 25 got a couple of points.

1 It starts with, "Each defendant's" -- no,  
2 we'll save that for tomorrow.

3 Do this part. "The pharmacy must  
4 accurately identify and document all red flags raised by  
17:00:49 5 the prescription, patient, and prescriber."

6 Now, you've gone into that. I don't want  
7 to be redundant. I don't want to have you repeat what  
8 you've said, but why is it important that this be  
9 something not just for the pharmacist but also for the  
17:01:04 10 pharmacy?

11 A. Again, for all the reasons we talked about, the  
12 pharmacy is responsible, it has the same requirements as  
13 the pharmacist.

14 Q. And then putting this altogether, you've got, "The  
17:01:18 15 pharmacy must reasonably collect complete, relevant, and  
16 accurate information concerning each red flag."

17 Why must the pharmacy do this?

18 A. And again, as we've talked about that, information  
19 must be clear and understandable for someone else looking  
17:01:36 20 at that patient record.

21 To simply write something that that  
22 pharmacist may know, like I checked with a doctor or  
23 facts from his office, doesn't explain that that red flag  
24 has been resolved for somebody else that's looking at a  
17:01:51 25 prescription that needs to know why that was resolved.

1 Q. Does the CSA or the state regs, to your knowledge,  
2 and this is how we're putting this together, tell  
3 pharmacies how to go about documenting it and how to go  
4 about collecting it?

17:02:05 5 A. No, sir.

6 Q. The obligation is there, but each pharmacy can  
7 figure out its own process by which they do it?

8 A. Yes, sir.

9 Q. And so have you seen different approaches by the  
17:02:20 10 four pharmacies you've looked at in this case?

11 A. Yes, sir.

12 Q. Okay. And will you be able to tell us about those  
13 differences where it's relevant?

14 A. Yes, sir.

17:02:31 15 Q. Opinion 12 continues on elements, common elements  
16 of due diligence.

17 "The pharmacy must independently evaluate  
18 the collected information to determine whether the  
19 evidence is reliable and whether the evidence as a whole"  
17:02:53 20 -- no, "Whether as a whole the evidence adequately  
21 resolves each red flag."

22 Now, is that the pharmacy at this point or  
23 the pharmacist that does this?

24 A. It's both, sir.

17:03:05 25 Q. Explain why it's both.

1 A. So as we talked earlier, the pharmacy has to  
2 provide the tools in support for the pharmacist to be  
3 able to conduct this investigation and to give a  
4 determination.

17:03:22 5 As a simple example, if I have a doctor  
6 that's actually writing bad prescriptions and I see all  
7 these patients coming from that doctor, if I call that  
8 doctor and say, "Hey, doc, are you writing bad  
9 prescriptions for your patients and do I need to call the  
17:03:42 10 DEA and let them know this," I don't think very many  
11 doctors are going to say, "Yeah, I admit that. Please  
12 call the DEA and I'll turn in my license."

13 So this says you have to go beyond that and  
14 going beyond that would rely on the corporation or  
17:03:57 15 pharmacy to give you that information or that data. What  
16 are they seeing from this doctor at other pharmacies,  
17 what are they seeing aggregate, is there anything that's  
18 been presented by the DEA or the Medical Board about that  
19 doctor that would indicate there's a problem?

17:04:10 20 That's the type of support that the  
21 pharmacist needs from the pharmacy beyond just simply  
22 saying I'm going to call the doctor and ask the doctor if  
23 he's really doing or she's really doing what I think  
24 she's doing.

17:04:23 25 Q. Okay. Then you put number four lastly.

1 "The pharmacy must clearly and explicitly  
2 document their evaluation of the evidence and their  
3 reasoning supporting their judgment to dispense the  
4 prescription."

17:04:36 5 Are you saying pharmacy or pharmacy, is  
6 that including the pharmacist?

7 A. Both.

8 The pharmacist has to do this, but the  
9 pharmacy has to give them the means, the tools, and the  
17:04:49 10 support to do so.

11 Q. All right.

12 And again, when you go back and look at  
13 prescriptions like you did in this case, in these  
14 pharmacies in these counties, are you looking for that  
17:05:03 15 documentation?

16 A. Yes, sir.

17 Q. And was, at least for some of the time periods, was  
18 there a provision to provide that documentation?

19 A. I'm sorry, sir, provision?

17:05:16 20 Q. In other words -- well, we'll get to it when we  
21 look at the prescriptions. But I really want to try and  
22 finish this before we do.

23 Opinion 13, "Each defendant failed to  
24 provide its pharmacists with data, information and the  
17:05:35 25 tools necessary to assist the pharmacists in fulfilling

1 their corresponding responsibility duties, including but  
2 not limited to utilizing dispensing data to identify  
3 patterns, trends, and practitioners possibly involved in  
4 diversion, as well to recognize and resolve red flags."

17:05:59 5 Let's divide that and have you speak about  
6 each, please.

7 So each defendant failed to provide with  
8 data, information, and tools.

9 What kind of data, information and tools  
17:06:12 10 are you looking for?

11 A. The data is the information that we talked about  
12 earlier, information about the prescribers, the amount of  
13 medications or opioids that are being dispensed, all of  
14 that information that the corporation has access to and  
17:06:31 15 centralizes.

16 The information is the documentation of the  
17 patient notes, the DUR notes, providing that information  
18 to the pharmacists so they have it at their disposal when  
19 they're dispensing a prescription.

17:06:42 20 And the tools are again having the  
21 staffing, having computer systems, having the time to  
22 actually conduct that diligence.

23 Q. Now, have you seen that the pharmacies got better  
24 over time as various things motivated them or educated  
17:07:03 25 them and their systems evolved?

1 A. After there were actions by the DEA, I saw some  
2 improvements, but I didn't see anything that I -- I  
3 really don't know how to respond to that question, sir.

4 I'm sorry.

17:07:27 5 Q. All right. Maybe you can when you walk through the  
6 prescriptions you've actually looked at.

7 Now, you've explained corresponding  
8 responsibility duties, including but not limited to  
9 utilizing dispensing data to identify patterns, trends,  
17:07:42 10 and practitioners possibly involved in diversion as well  
11 as to recognize and resolve red flags."

12 Anything else you haven't told us in that  
13 regard?

14 A. No, sir.

17:07:50 15 Q. All right. Opinion 13 continues.

16 "The subsequent result of the failure to  
17 provide such data, information, and tools likely led to  
18 the diversion of quantities of controlled substances,  
19 particularly opioids, outside of the closed distribution  
17:08:12 20 and dispensing system for controlled substances."

21 Is that your opinion?

22 A. Yes, sir.

23 Q. And is it based upon reasonable probability of your  
24 expertise?

17:08:21 25 A. Yes, sir.

1 Q. And would you explain why?

2 A. For so much injury to have resulted from opioid use  
3 in Lake and Trumbull Counties, if those medications were  
4 controlled within the closed system, and if they were  
17:08:37 5 issued for legitimate medical purposes, there shouldn't  
6 have been the numbers of people that were injured or died  
7 from those opiates.

8 And that's the data that I looked at, as  
9 well as the number of prescriptions with multiple red  
17:08:51 10 flags that were dispensed by the defendants without  
11 having those red flags resolved.

12 MS. SULLIVAN: Objection, Your Honor. Move  
13 to strike.

14 It's inconsistent with your *Daubert* ruling.

17:09:04 15 THE COURT: Hold.

16 (Proceedings at side-bar:)

17 THE COURT: All right. Ms. Sullivan, that  
18 was mighty late.

19 I was -- I waited for a very long question  
17:09:25 20 and it was clear what that question was and what the  
21 answer was, but, Mr. Lanier, I agree it was -- that was  
22 outside the scope of my *Daubert* ruling.

23 So I'm going to have to instruct the jury  
24 to disregard that last answer and I'd caution counsel  
17:09:46 25 that, you know, it's your job to object; not mine.



1 MS. SULLIVAN: And, Your Honor --

2 MR. LANIER: Your Honor, if I could, I  
3 thought I read that almost word-for-word from your  
4 *Daubert* ruling.

17:10:04 5 Your *Daubert* ruling said that Carmen  
6 Catizone can say dispensing of red flag prescriptions,  
7 without conducting adequate investigation or due  
8 diligence, is likely to lead to diversion, which is what  
9 I put.

17:10:17 10 You said he cannot say that it definitely  
11 resulted in diversion, and he cannot say a significant or  
12 specific amount of diversion, but I think that I wrote  
13 that the exact way --

14 THE COURT: We're just taking a short pause  
17:10:36 15 because a juror had to go to the restroom.

16 MR. LANIER: Oh.

17 (End of side-bar conference.)

18 THE COURT: All right. The -- I'm  
19 sustaining that objection.

17:12:30 20 The jury is to disregard the last answer.

21 MR. LANIER: Your Honor, could I be heard  
22 on it?

23 THE COURT: If you want to rephrase the  
24 question, I'm sustaining the question as asked and,  
17:12:41 25 therefore, the answer.

1 MR. WEINBERGER: Your Honor, may we  
2 continue to have a side-bar? Because we didn't have a  
3 chance to respond.

4 (Proceedings at side-bar:)

17:12:56 5 THE COURT: I've made my ruling.

6 The question asked was outside the scope of  
7 my *Daubert* ruling.

8 MR. LANIER: Okay.

9 THE COURT: I'm not saying that any  
17:13:07 10 question anywhere close to that is outside it, but the  
11 question that was asked called for an answer that's  
12 outside of my *Daubert* ruling.

13 MR. LANIER: Okay. Your Honor, Mark Lanier  
14 for plaintiffs.

17:13:17 15 MR. WEINBERGER: Your Honor, we -- Your  
16 Honor, we didn't have a chance to respond, with all due  
17 respect, and we would ask for the opportunity to do that.

18 THE COURT: You can respond, but I'm -- you  
19 can put anything on the record you want.

17:13:46 20 I'm not changing my ruling.

21 MR. LANIER: Yes, Your Honor.

22 I'll -- I'll move accordingly.

23 I just would like the Court to understand  
24 that I worded that so carefully because at Page 11 on the  
17:13:58 25 *Daubert* ruling, you said he may be qualified to testify

1 as to likely consequences but you specifically said he  
2 couldn't say significant or definitely, but that he could  
3 say likely.

4 And that's the reason I worded it but I'll  
17:14:14 5 reask it, Judge.

6 THE COURT: I believe the way you worded  
7 that question exceeded the scope of my ruling.

8 MR. LANIER: I'll reask it, Your Honor.

9 (End of side-bar conference.)

17:14:23 10 BY MR. LANIER:

11 Q. All right. May it please the Court.

12 Mr. Catizone, let me ask it this way.

13 Do you believe that these failures of  
14 dispensing red flag descriptions, without conducting  
17:14:46 15 adequate investigation or due diligence, is likely to  
16 lead to diversion?

17 A. Yes, sir.

18 Q. Okay. And with that, let me ask you about one last  
19 set of questions on documentation and then we'll be  
17:15:17 20 caught up to where we can go into the specifics.

21 Documentation of red flags. "Documentation  
22 identifies critical factors, such as red flags, whether  
23 the pharmacist resolved the red flags, and information  
24 alerting to the occurrence or possibility of diversion.  
17:15:38 25 It also provides proactive direction to other pharmacists

1 presented with the prescription going forward."

2 I know you've touched on a lot of this, and  
3 I don't want to be redundant, so let's try and focus on  
4 some important concepts you isolate with this opinion.

17:15:56 5 The critical factors are things like red  
6 flags.

7 Fair?

8 A. Yes, sir.

9 Q. And are other critical factors things like  
17:16:07 10 appearance of the person, whether they're inebriated, I  
11 mean are there other aspects that are critical factors  
12 beyond what we've discussed?

13 A. Yes, sir.

14 Q. Would you talk to us a little bit about those,  
17:16:23 15 please?

16 A. I mentioned those in my report. There are other  
17 signs besides the ones we discussed today where a patient  
18 may show up inebriated or high, a patient may be having a  
19 bunch of prescriptions for multiple patients and handing  
17:16:37 20 those prescriptions out.

21 The patient may use slang terms in  
22 referring to the drugs rather than the other names.

23 Other patient behaviors could signal the  
24 pharmacist and could be red flags.

17:16:51 25 Q. And these critical factors that are in addition to

1 the red flags we discussed, would you expect them to  
2 cause a pharmacist to be on alert?

3 A. Yes, sir.

4 Q. Would you expect the pharmacist to document such  
17:17:09 5 things?

6 A. Yes, sir.

7 Q. Would you expect a pharmacist to investigate such  
8 things?

9 A. Yes, sir.

17:17:17 10 Q. If someone comes in and they're using slang terms  
11 for the drugs, what kind of an investigation could a  
12 pharmacist do in that situation?

13 A. If that person had a prescription that was to be  
14 dispensed, the pharmacist then should take action to  
17:17:36 15 notify the prescriber and document that and then make a  
16 determination whether or not that was a legitimate  
17 prescription.

18 Q. If a customer comes in and is inebriated or high  
19 and they're seeking to fill a prescription, what can you  
17:17:50 20 do about that as a prescriber -- I mean as a dispenser, a  
21 pharmacist?

22 A. As a pharmacist, the guidance that's been given by  
23 the DEA and state boards is that a pharmacist can refuse  
24 to dispense and, in fact, that's probably the best matter  
17:18:04 25 of course than filling a prescription that you knowingly

1 know is not for legitimate purpose or could be diverted.

2 Q. And then you've linked that to documentation.

3 Why would you want to document something as  
4 small as inebriation or using slang terms?

17:18:24 5 A. Because that's a red flag that would indicate that  
6 there's a problem with that patient, that prescriber, or  
7 that prescription.

8 So the pharmacist would be on alert who  
9 filled that prescription afterwards.

17:18:36 10 Q. And then when you talk about providing proactive  
11 directions to other pharmacists as you're going forward,  
12 is that what you're referencing there?

13 A. Yes, sir.

14 Q. And in what ways would another pharmacist benefit  
17:18:54 15 from the due diligence you did?

16 A. If the pharmacist made a determination that it was  
17 not a legitimate prescription, then the note in there  
18 would be do not fill these prescriptions for this patient  
19 or some other proactive message to the pharmacist so that  
17:19:09 20 when the pharmacist or that patient returned, the  
21 pharmacist then would have some idea of what action  
22 should be taken or the other pharmacists had taken prior  
23 to that.

24 Q. All right.

17:19:19 25 And then opinion number 10 is the one that

1 I really want to probe tomorrow morning, if His Honor  
2 will allow it, and that is "Each defendant's pharmacies  
3 in Lake and Trumbull County filled thousands of  
4 prescriptions presenting red flags without evidence of  
17:19:36 5 resolving those red flags."

6 Recognizing that our time is short this  
7 afternoon, can you give us at least a thumbnail of why  
8 you say that?

9 A. In the supplemental report that I filed, I looked  
17:19:53 10 at every single one of the prescriptions provided by the  
11 defendants, and then I looked at spreadsheet information  
12 that included all of the notes that were associated with  
13 some of those prescriptions because not all the  
14 prescriptions were provided where there were notes.

17:20:08 15 And I analyzed and looked at each of the  
16 notes to determine whether or not they were relevant to  
17 what we just talked about, the red flags, and based upon  
18 that, that's where my opinion came.

19 Q. All right.

17:20:24 20 MR. LANIER: Your Honor, I'm glad to --

21 THE COURT: If this is a good time to stop,  
22 then I don't want to cut you off in the middle.

23 MR. LANIER: No, you're not cutting me off.  
24 In fact, my brain is dead and this would be a great time  
17:20:41 25 to stop.

1 THE COURT: If your brain is dead, then  
2 it's definitely a good time to stop.

3 MR. LANIER: Thank you, Judge.

4 THE COURT: Ladies and gentlemen, we're  
17:20:48 5 going to break for the evening.

6 Usual admonitions.

7 There was a question posed by one of the  
8 jurors and I discussed it with counsel, and they want me  
9 to answer.

17:20:59 10 All right. We've had two experts. We're  
11 going to have a lot of experts, as almost all the  
12 experts, I think every expert in this case provided a  
13 report, the expert was deposed at least once on the  
14 report. A deposition is just questions by the lawyer  
17:21:17 15 outside of Court. There's a transcript. You'll see  
16 references to that.

17 The report itself is not evidence and is  
18 not going to be introduced into evidence. The evidence  
19 is the testimony, the answers that the expert gives to  
17:21:31 20 all the questions posed.

21 Okay. Usual admonitions apply. Excuse me.

22 Tomorrow in deference to the fact it's a  
23 three-day weekend and a lot of the lawyers are from out  
24 of town, we're going to conclude somewhere around 3:00  
17:21:52 25 o'clock. I'm sure none of you will object to getting out



1 a little early.

2 So have a good evening and we'll commence  
3 promptly at 9:00 o'clock with the balance of  
4 Mr. Catizone.

17:22:04 5 (Jury out.)

6 THE COURT: Okay. I just -- just for  
7 everyone's scheduling, and plaintiffs need to know if  
8 they need to have another witness, Mr. Lanier, about how  
9 much longer do you anticipate with Mr. Catizone?

17:23:00 10 MR. LANIER: I think it is likely going to  
11 take about an hour-and-a-half to work through what I've  
12 got left. It's just so number intensive.

13 THE COURT: All right. Ballpark, an  
14 hour-and-a-half.

17:23:10 15 MR. LANIER: Yes, sir.

16 THE COURT: Do defendants have a reasonable  
17 estimate of your cross-examination?

18 MR. MAJORAS: It could go as long as three  
19 hours, I think, Your Honor.

17:23:19 20 That may be -- I'm leading with --

21 THE COURT: Is that for you alone?

22 MR. MAJORAS: I will take the first crack  
23 at it, Your Honor. There may be some follow-up as we saw  
24 with Dr. Lembke.

17:23:32 25 THE COURT: All right. If you're saying

1       you're going to take three hours.

2                       MR. MAJORAS: That's probably overbroad,  
3       Your Honor.

4                       I was trying to incorporate everyone else  
17:23:40 5       in my answer.

6                       THE COURT: Okay.

7                       MR. MAJORAS: I guess I would be in the  
8       two, two-and-a-half hour range personally.

9                       THE COURT: All right. I'm just trying  
17:23:48 10       to -- my brain is fried, I can't count.

11                      I'm just thinking, yeah, I mean I'm  
12       thinking that, that looks like about four-and-a-half  
13       hours, which is about what we've got.

14                      MR. LANIER: Yes.

17:24:01 15                     THE COURT: So I don't -- there's no point  
16       starting a witness for five or 10 minutes so it looks  
17       like the day will be pretty much finished.

18                      I'd like to be able to conclude  
19       Mr. Catizone, if we can, so if it's going -- if we're  
17:24:15 20       going to be able to finish by going a little after 3:00,  
21       I think it's preferable to everyone.

22                      MR. MAJORAS: Yes.

23                      THE COURT: But I will not cut off the  
24       cross-examination. If you have a lot more, so be it,  
17:24:28 25       he'll have to come back.

1 MR. MAJORAS: We will do that, Your Honor,  
2 but --

3 THE COURT: Especially since we are  
4 breaking for three days, it would be better not to have  
17:24:38 5 to break for three days in the middle of a witness but I  
6 will not cut anyone off.

7 MR. MAJORAS: We will endeavor to do that,  
8 Your Honor.

9 (Discussion had off the record.)

17:25:16 10 MS. FIEBIG: Your Honor, there were two  
11 items we were hoping to note for the record.

12 THE COURT: All right. Everyone can be  
13 seated.

14 MS. FIEBIG: Very briefly, as a matter of  
17:25:26 15 housekeeping, the plaintiffs introduced this morning two  
16 new county executive representatives. And just for the  
17 record to be complete, their names, I believe, are Jason  
18 Boyd from Lake County and Richard Jackson from Trumbull  
19 County, and hopefully the plaintiffs can give us their  
17:25:44 20 titles.

21 THE COURT: Okay. Well, if you know that,  
22 Mr. Jackson's and Mr. Boyd's titles, that's great.

23 MR. GALLUCCI: Mr. Boyd is the  
24 administrator for Lake County. Mr. Jackson is Director  
17:25:57 25 of Human Resources for Trumbull County. Mr. Boyd was

1 also present with us initially during voir dire.

2 THE COURT: Okay. Thank you.

3 MS. FIEBIG: Thank you.

4 The second item, Your Honor, is that the  
17:26:08 5 demonstrative slides that have been displayed I think are  
6 truly misnomers as demonstratives. They are not  
7 demonstratives. Demonstratives are intended to aid the  
8 jury in their understanding of admissible evidence and  
9 here, the expert reports are not admissible evidence and  
17:26:26 10 this is a clearly improper end run around that fact.

11 What Mr. Lanier has done during his  
12 examination is read opinions into the record before they  
13 have been testified to and displayed them to the jury  
14 before they have been testified to and then asked  
17:26:39 15 questions about those opinions, which is plainly  
16 improper.

17 And it's obviously confusing the jury,  
18 because they've now twice asked for a report that is not  
19 in evidence.

17:26:48 20 And so we would object to the practice and  
21 ask the Court to instruct Mr. Lanier that is an improper  
22 way for him to conclude his examination of Mr. Catizone.

23 THE COURT: Well, you know, I will let you  
24 do the same thing if you want.

17:27:06 25 Robert, my mic is off. Can you get it back

1 on, please?

2 All right. I wouldn't allow it with a lay  
3 witness, but I actually think it's -- I think it's  
4 helpful, excuse me, helpful for the jury, understanding  
17:27:46 5 what this expert's going to say, and if you want to do it  
6 with yours, you can. We've got the same ground rules for  
7 both sides.

8 I haven't seen it done before. I certainly  
9 wouldn't allow it with a fact witness. But you'd never  
17:27:58 10 do it with a fact witness. With a fact witness, it would  
11 be leading.

12 MR. LANIER: Right.

13 THE COURT: But you've got his report,  
14 everyone knows what he's going to say.

17:28:06 15 I don't think it's improper, but obviously,  
16 I'll allow it for both sides. You can do the same thing  
17 with your experts, if you want.

18 So I'm going to overrule that objection.

19 MS. FIEBIG: Thank you, Your Honor.

17:28:19 20 THE COURT: There's no worry about leading,  
21 okay? And I certainly wouldn't allow it if, you know, I  
22 don't have the report. If he's putting up something that  
23 isn't in the report or is different, that's improper and  
24 I certainly would sustain that.

17:28:34 25 But I gather since there were not

1 objections to that, that those demonstratives accurately  
2 reflect what the witness has in his or her report.

3 MR. WEINBERGER: Your Honor, we should  
4 point out that these slides were provided in advance  
17:28:50 5 pursuant to our protocols.

6 THE COURT: Okay.

7 MR. WEINBERGER: And there were no  
8 objections.

9 MS. FIEBIG: There were objections.

17:28:56 10 There were objections and it's inconsistent  
11 with the *Bray* decision from the Sixth Circuit about what  
12 the purpose of demonstratives is.

13 MR. WEINBERGER: Well, the Court has made  
14 its ruling.

17:29:06 15 THE COURT: I'm not familiar with that  
16 case.

17 I think -- I don't think there's any  
18 problem doing it with an expert. You have a case where  
19 the Sixth Circuit says that you can't do this with an  
17:29:18 20 expert? I'll certainly -- look, if the Sixth Circuit has  
21 said that this is improper with an expert, obviously I've  
22 got to look carefully at that. And if the Sixth Circuit  
23 has prohibited this, we can't do it.

24 It may be okay in Texas, but I've got  
17:29:33 25 to -- if the Sixth Circuit says I can't do it --

1 MS. FIEBIG: Thank you, Your Honor.

2 MR. LANIER: We'd love to see the case.

3 THE COURT: All right. So no. If there is  
4 one, I want to see it.

17:29:46 5 MS. FIEBIG: Thank you, Your Honor.

6 We'll submit something in writing if it's  
7 helpful to the Court. It's not a ruling specific to  
8 expert opinions, but it does clearly that demonstratives  
9 are for summarizing or helping the jury to understand  
17:29:58 10 admissible evidence and here the expert reports have not  
11 been admitted and the testimony's not being elicited --

12 THE COURT: Well, Ms. Fiebig, he's going to  
13 say it. The conclusion is his testimony is admissible,  
14 okay?

17:30:08 15 MS. FIEBIG: Understood.

16 THE COURT: I mean there would be  
17 nothing -- I mean if Mr. Lanier has a witness say do you  
18 have conclusions and he goes what's the first conclusion,  
19 the witness reads conclusion one from his or her report,  
17:30:24 20 that's allowed.

21 So I mean it's the same thing. Unless I  
22 see a case where the Sixth Circuit says a lawyer cannot  
23 do this, it's improper, I'm allowing it.

24 And if you want to do it with your experts,  
17:30:40 25 obviously you can do exactly the same thing.

1 MS. FIEBIG: Thank you, Your Honor.

2 THE COURT: Okay.

3 MR. WEINBERGER: Your Honor, on behalf of  
4 plaintiffs, a couple things if we may.

17:30:48 5 THE COURT: All right.

6 MR. WEINBERGER: You may recall that  
7 subsequent to the issuance of expert reports, initial  
8 expert reports in this case, there was an order for the  
9 defendants to turn over a sample of their due diligence  
17:31:06 10 notes.

11 THE COURT: Presumably that's the -- well,  
12 that's the 8,000 prescriptions and the notes.

13 MR. WEINBERGER: Correct.

14 THE COURT: That Mr. Catizone talked about.

17:31:14 15 MR. WEINBERGER: And Mr. Catizone submitted  
16 a supplemental report, and he was deposed on that  
17 supplemental report.

18 Because of the significant time that it  
19 took for the defendants to turn over these notes, the  
17:31:32 20 report was issued within the last couple weeks. He was  
21 deposed last week. And the defendants have not submitted  
22 any response in terms of their -- supplementing their own  
23 expert report.

24 So I just wanted to give that to you as  
17:31:51 25 background.



1 We would like to submit that report to you  
2 for your review because it's going to be relevant to  
3 testimony tomorrow and it's relevant to your *Daubert*  
4 ruling on this witness.

17:32:00 5 At footnote 10 -- at Page 10, Footnote  
6 number 8, if you want to pull that out, Your Honor, of  
7 the *Daubert* ruling you write, "In deposition, Catizone  
8 testified a significant number, which he estimated to be  
9 70 to 90 percent of flagged prescriptions were diverted  
17:32:29 10 in the Track Three counties. When asked to identify the  
11 factors that led him to this conclusion, Catizone stated,  
12 'absent patient notes and other documentation, I couldn't  
13 qualify or quantify what significant meant.' "

14 So he, in his supplemental report, Your  
17:32:52 15 Honor, he has reviewed the notes relating to the 2,000  
16 scripts, random sample of scripts, and he has rendered  
17 opinions as to what percentage of those notes did or did  
18 not contain due diligence with respect to those red  
19 flagged scripts.

17:33:20 20 So we would ask that you review the report  
21 so that you know what his analysis was, and we are going  
22 to ask questions relating to those notes and the  
23 percentages that he found.

24 We also have an expert, Dr. McCann, our  
17:33:52 25 statistician, who has issued a supplemental report which

1 we can provide to you.

2 THE COURT: Let's stick with Catizone.

3 MR. WEINBERGER: Okay. I just wanted you  
4 to know --

17:34:02 5 THE COURT: I will allow Catizone to  
6 testify his examination of 8,000, and if he says, you  
7 know, X percent were red flags, just say 25 percent were  
8 red flags, that's 2,000, and if he says, you know, I only  
9 found notes on 10 percent, so 90 percent, they're -- I  
17:34:22 10 mean, he can't say categorically they weren't resolved.

11 He can say I found no evidence of  
12 resolution.

13 MR. WEINBERGER: Correct. Right.

14 THE COURT: And then whatever.

17:34:30 15 But I'm not going to let him opine as to  
16 what percent may have been diverted because he doesn't  
17 know.

18 MR. WEINBERGER: Right.

19 THE COURT: Again, he has no idea.

17:34:41 20 He said a red flag doesn't mean it's  
21 improper or not.

22 All he can testify to is what he saw and  
23 that the best practice is to document, and if you don't  
24 document, there's no way to know if the pharmacist did  
17:34:56 25 due diligence or not.

1                   Okay? So I will allow all that but I'm not  
2 going to let him opine as to what percent may have been  
3 or were diverted.

4                   MR. WEINBERGER: Okay. And I just want to  
17:35:14 5 make clear that the notes -- that the scripts and the due  
6 diligence notes that were part of the random sampling  
7 were only of scripts that we identified previously that  
8 were red flagged scripts.

9                   THE COURT: All right.

17:35:29 10                  MR. WEINBERGER: So that, I just wanted you  
11 to understand for the math purposes.

12                  THE COURT: Okay.

13                  MR. WEINBERGER: Thank you, Your Honor.

14                  I mean, if you're -- if you're interested  
17:35:38 15 in seeing the reports, we're happy to provide them. If  
16 not --

17                  THE COURT: Well, I'll look at -- I'll look  
18 at Catizone's supplemental report.

19                  MR. WEINBERGER: Okay.

17:35:47 20                  THE COURT: I'll read that tonight. It  
21 will help me understand where he's coming from and if  
22 there are any objections --

23                  MR. LANIER: It will put you to sleep, Your  
24 Honor.

17:35:58 25                  MR. WEINBERGER: I thought it was

1 fascinating.

2 MR. MAJORAS: Your Honor --

3 THE COURT: Yes?

4 MR. MAJORAS: John Majoras.

17:36:02 5 Just in response to one thing

6 Mr. Weinberger said about the response reports, by that  
7 we are permitted according to the Court's schedule, those  
8 are not actually due until Monday so there will be  
9 response reports.

17:36:14 10 So if you're listing reports that you might  
11 want to read, just bear that in mind.

12 THE COURT: I'm not going to read any more  
13 of them, but I've got this witness on and there's a  
14 specific *Daubert* ruling, and I want to make sure that  
17:36:29 15 everything stays within it.

16 MR. MAJORAS: Okay. And I have one other  
17 short --

18 THE COURT: What I believe we have to date  
19 so I will read this tonight.

17:36:36 20 MR. LANIER: Your Honor, in that regard, I  
21 wanted to say to you, whether on or off the record, I  
22 went back and looked at the question that I had asked and  
23 you were right and I was wrong. It was outside your  
24 *Daubert* ruling and I apologize.

17:36:50 25 THE COURT: Yes. There was a word or two.

1 MR. LANIER: Yeah. No, you are right.

2 THE COURT: That was outside --

3 MR. LANIER: So I was wrong and I  
4 apologize.

17:36:56 5 THE COURT: No problem.

6 I was listening very carefully and,  
7 candidly, I expected an objection, you know, but since  
8 there was one -- wasn't one until after the answer, but  
9 then I sustained it.

17:37:07 10 So.

11 MR. LANIER: Yes.

12 THE COURT: The second question -- the  
13 second question you asked was within, so that's the way  
14 it should be.

17:37:13 15 All right.

16 MR. MAJORAS: Your Honor, one -- I'm sorry,  
17 one housekeeping issue related to today's testimony.

18 As you'll recall, we played a clip from an  
19 interview with Dr. Lembke.

17:37:25 20 THE COURT: Right.

21 MR. MAJORAS: And the way the court  
22 reporting is done that doesn't get transcribed into the  
23 record.

24 I spoke to Madame Court Reporter, and  
17:37:36 25 indicated that if it would be helpful, I could get a

1 digital copy of that transcript, that we can give to  
2 insert into the court record.

3 THE COURT: Probably a good idea,  
4 Mr. Majoras. Otherwise, it's sort of a --

17:37:50 5 MR. MAJORAS: It's an empty space, Your  
6 Honor.

7 THE COURT: That's a good idea.

8 If -- to do that, and if anyone does that  
9 again, obviously it's proper cross-examination, it's a  
10 prior statement.

11 MR. MAJORAS: And we will, of course, share  
12 that with the plaintiffs, Your Honor.

13 Thank you.

14 THE COURT: Good idea.

17:38:09 15 MR. WEINBERGER: Your Honor, I want to move  
16 into evidence some exhibits.

17 THE COURT: Okay. What exhibits?

18 MS. FLEMING: CVS MDL 04955.

19 THE COURT: 04095 --

17:38:28 20 MR. WEINBERGER: 049.

21 THE COURT: 04 --

22 MR. WEINBERGER: No, 04955.

23 THE COURT: 04955. Sorry. I didn't ask  
24 for exhibits. These are exhibits that they are moving.

17:38:43 25 MR. WEINBERGER: I'm sorry. I have to give

1 you the P number, Your Honor. Sorry.

2 MR. DELINSKY: Are these from today?

3 THE COURT: From Lembke.

4 MR. DELINSKY: It's from Lembke?

17:38:57 5 MR. GALLUCCI: We have to do it at the end  
6 of the witness's testimony.

7 MR. DELINSKY: You can't introduce --

8 MS. FUMERTON: Not only that, Your Honor,  
9 just to add on to that, I spoke with Mr. Lanier at the  
17:39:10 10 beginning of the testimony, and he said plaintiffs were  
11 not going to be moving any exhibits through their  
12 experts.

13 MR. LANIER: Your Honor, my understanding  
14 is, my practice from coast-to-coast has been an expert  
17:39:21 15 cannot prove up a document for admission.

16 THE COURT: Right.

17 MR. LANIER: And so the expert, I cannot  
18 use the expert to put a document into evidence.

19 However, it's also my understanding and  
17:39:32 20 practice coast-to-coast that you can tender documents  
21 into evidence at any point in time if they're admissible  
22 documents.

23 You may have to prove up their  
24 authenticity, that foundation.

17:39:44 25 THE COURT: Authenticity has already been

1 taken care of.

2 MR. LANIER: Exactly. So I think we can  
3 move in wholesale a number of documents.

4 THE COURT: I had said yesterday I wanted  
17:39:55 5 the parties to just confer. If there are a whole bunch  
6 of exhibits that both sides want to admit and there's no  
7 objection, I'll just admit them. Give me a list. Okay?

8 I mean, all right, but if they're not  
9 related to Lembke, it doesn't --

17:40:15 10 MR. WEINBERGER: This is related to Lembke.  
11 So this is -- these are exhibits that were used during  
12 the Lembke testimony.

13 THE COURT: Except Ms. Fumerton said  
14 Mr. Lanier said he wasn't offering anything through her.

17:40:30 15 It sounds like these are documents --

16 MR. WEINBERGER: These are documents that  
17 were authenticated and then were utilized, Your Honor.  
18 They were the two Purdue documents, one was the CVS  
19 letter --

17:40:40 20 THE COURT: All right.

21 MR. WEINBERGER: -- with Purdue. And I  
22 mean I can describe them to you.

23 Can I have that list, please?

24 THE COURT: I agree, you know, they were  
17:40:49 25 testified to extensively.



1 MR. WEINBERGER: Yes.

2 THE COURT: They are effectively in.

3 MR. WEINBERGER: One was the how to stop  
4 drug diversion --

17:40:57 5 THE COURT: Just give me the numbers and  
6 I'll admit them. If they are over objection -- if I  
7 thought they were inadmissible, I wouldn't have allowed  
8 all the testimony and have them shown.

9 MR. WEINBERGER: So it's the CVS document,  
17:41:10 10 and we're pulling the P number. I'm sorry.

11 The second is P 08658.

12 MR. DELINSKY: Pete, which one is that?

13 MR. WEINBERGER: That's the patient and  
14 pharmacist educational service presentation.

17:41:34 15 THE COURT: That's not the way it was --

16 MR. WEINBERGER: Your Honor, I'm just  
17 telling defense counsel how to look it up.

18 (Counsel conferring.)

19 All right. And then two documents that  
17:41:44 20 were used during cross-examination, P 08663, the letter  
21 from CVS to the pharmacists, dated June, 2001, and P  
22 25984, the letter from Purdue to Walgreen's pharmacy  
23 supervisor, dated December 21st, 1998.

24 THE COURT: All right. Those two can be  
17:42:10 25 admitted.

1 Is there a first one? Is there a first  
2 one?

3 MR. DELINSKY: Your Honor, could I please  
4 be heard on these?

17:42:20 5 THE COURT: You used them.

6 MR. DELINSKY: No, Your Honor, that's not  
7 correct.

8 Mr. Lanier published to the jury in his  
9 direct examination excerpts of these documents, okay,  
17:42:32 10 from her report.

11 When he put her report up on the screen, he  
12 is the one who published it. We referenced them in our  
13 cross-examination. This was simply cross.

14 Your Honor had already determined at that  
17:42:45 15 point that these are coming in as a basis of her opinion,  
16 not as admissible evidence.

17 THE COURT: Well, they're authentic. They  
18 were testified to.

19 MR. DELINSKY: We disagree, Your Honor.

17:42:58 20 THE COURT: I've overruled that objection.  
21 That argument that you can't rely on an outside counsel,  
22 there's no case law.

23 You're all outside counsel. You're all  
24 outside counsel. If you make a statement to me, you're  
17:43:09 25 binding your client. All right. That's how it works.

1 MR. DELINSKY: Okay. Well, Your Honor, let  
2 me move to my next round of objections.

3 Documents cannot be admitted in a trial, in  
4 a Federal Courthouse, in the United States of America,  
17:43:23 5 without a witness with knowledge, period, the end.

6 We don't try cases based on paper and paid  
7 experts coming from California and offering opinions  
8 about them. We conduct trials based on witness testimony  
9 about documents, and there's none here.

17:43:39 10 Some of these documents may be admissible.  
11 Some may not be. But we need -- they need to be put in  
12 with witnesses who can talk about them.

13 Absent that, we're just trying this  
14 case --

17:43:51 15 THE COURT: All right. Fine. I'll do this  
16 on both sides.

17 You bring in the witnesses then. I won't  
18 admit -- yeah.

19 MR. WEINBERGER: Your Honor --

17:44:01 20 THE COURT: I won't admit anything, all  
21 right? No side will get any documents.

22 People can refer to whatever they want and  
23 the jury is going to see it but the testimony -- you  
24 know, the testimony is in so.

17:44:14 25 MR. WEINBERGER: Your Honor, the first

1 Exhibit was P 17322 for the record.

2 THE COURT: P 17322?

3 MR. WEINBERGER: P 17322.

4 THE COURT: All right. Well --

17:44:26 5 MR. WEINBERGER: Again, a CVS -- this is a  
6 CVS document.

7 Without --

8 THE COURT: Well, I'm going to admit the  
9 CVS documents, okay? All right? I'm admitting the CVS  
17:44:39 10 documents as admissions of CVS, but I guess I can't  
11 technically, I can't admit the Purdue document without a  
12 witness to --

13 MR. LANIER: We'll provide you case law on  
14 that, Your Honor.

17:44:55 15 With due respect to Mr. Delinsky, I've  
16 tried 18 gazillion trials in federal courts around the  
17 country.

18 You have to have a witness to prove the  
19 authenticity of a document. That's what you have to have  
17:45:09 20 a witness for.

21 You do not have to have a witness to  
22 testify that the document is anything other than  
23 authentic. Once you have authenticity, the document can  
24 come into evidence unless there's a 402 or 403 or a 700  
17:45:21 25 or 800 objection. There's got to be an objection.

1 The only thing a witness does is prove  
2 authenticity, and you can even do that with an affidavit  
3 with a document. Many cases have been tried where you  
4 tender a lot of documents into evidence and you read  
17:45:35 5 those documents.

6 THE COURT: All right, look. I've given 75  
7 hours.

8 There's no way, if we've got to call in  
9 live witnesses to someone who received or sent that  
17:45:46 10 document, you know, that's all we're going to spend time  
11 on and there will be no substantive testimony.

12 MR. DELINSKY: But, Your Honor, let me  
13 describe the prejudice here.

14 First of all, Mr. Lanier is wrong, and he  
17:45:56 15 knows he's wrong. There's Rules of Evidence.  
16 Foundations have to be laid that go far beyond  
17 authenticity.

18 THE COURT: What --

19 MR. DELINSKY: This letter from CVS is in  
17:46:07 20 Purdue's files and Purdue's files only.

21 There was an assumption by an expert  
22 witness that that letter actually was sent to CVS  
23 pharmacists.

24 What testimony --

17:46:16 25 THE COURT: Wait a minute. Hold it.

1 Now, you're raising authenticity,  
2 Mr. Delinsky.

3 MR. DELINSKY: No.

4 THE COURT: All this was taken care of.

17:46:25 5 If you're saying because it's not in CVS's  
6 files you question the authenticity of it.

7 MR. DELINSKY: That's correct.

8 THE COURT: Well, that should have been  
9 raised a long time ago.

17:46:34 10 MR. DELINSKY: Your Honor, we've been  
11 raising that objection at every turn.

12 THE COURT: Special Master Cohen said all  
13 the authenticity was covered.

14 MR. DELINSKY: No. No.

17:46:41 15 THE COURT: All right. Then I want  
16 you -- all right. I want you to bring in, I mean I'll  
17 hold off on that.

18 I want you to have a witness who testifies  
19 that they don't believe it's authentic because they have  
17:46:54 20 searched CVS's files.

21 MR. DELINSKY: We don't have any current  
22 employees, Your Honor, who are on that document.

23 THE COURT: You'd better find someone.

24 Bring in a witness, take some of your time to talk about  
17:47:03 25 it, and then I'll have to make a decision. All right?

1 MR. DELINSKY: Okay.

2 THE COURT: But, you know, I will hold off  
3 on that because there is -- CVS is making a challenge to  
4 the authenticity of that document, that because they  
17:47:18 5 searched their files and they don't have it, they  
6 question whether it's authentic.

7 So, all right. So which one was that? I'm  
8 going to reserve ruling until I hear CVS's witness.

9 Which one?

17:47:31 10 MR. LANIER: Your Honor, that would apply  
11 to several documents, including the one CVS used today  
12 that came out of the Purdue files.

13 THE COURT: Well, that's a problem, too, if  
14 you're using a document that came out of Purdue's files.

17:47:45 15 MR. DELINSKY: Your Honor.

16 THE COURT: All right.

17 Mr. Delinsky, you're going to use some of  
18 your time to bring in witnesses who are going to  
19 challenge the authenticity of those documents.

17:47:59 20 Which are those two? I'm going to reserve  
21 ruling. You mentioned four documents.

22 Two of them were the Purdue ones. I'm  
23 going to hold off.

24 CVS ones, I'm going to admit.

17:48:10 25 MR. LANIER: And with due respect to

1 Mr. --

2 THE COURT: I've moved on.

3 MR. LANIER: All right.

4 THE COURT: Just tell me which are the two

17:48:17 5 Purdue ones that I'm going to reserve ruling on?

6 You mentioned four documents. I'm

7 admitting two and holding off on two.

8 MR. WEINBERGER: Okay. So the one Purdue

9 document is P 25984.

17:48:31 10 THE COURT: That's the last one?

11 MR. WEINBERGER: Right.

12 THE COURT: That's the December 21st, 1998.

13 All right. I'm reserving ruling.

14 MR. STOFFELMAYR: Judge, just to be clear,

17:48:40 15 we have no objection to the admission of that document.

16 That document concerns Walgreen's.

17 I have a concern is a more general matter

18 to nonparty documents, but Mr. Delinsky's concerns about

19 that document do not apply to this document.

17:48:51 20 I don't want you to think --

21 THE COURT: All right. So that one comes

22 in.

23 All right. P 25948 comes in.

24 Which is the one, Mr. Delinsky -- I think

17:49:00 25 it's the P 08663, June 2001, that's the one you're



1 objecting to?

2 MR. DELINSKY: That is -- that is the first  
3 one. That's the letter, right, Pete?

4 MR. WEINBERGER: That's correct.

17:49:12 5 THE COURT: All right. I'm reserving until  
6 I hear from a CVS witness.

7 All right. Now what are the other two?  
8 17322 and 08658, those are the CVS documents?

9 MR. WEINBERGER: The first one is a CVS  
17:49:27 10 document, that's their brochure.

11 THE COURT: All right. That can come in.

12 MR. DELINSKY: Wait, which one are you  
13 talking about, Pete?

14 THE COURT: 173.

17:49:38 15 MR. WEINBERGER: 173228.

16 THE COURT: Okay. That comes in.

17 MR. DELINSKY: Do you have a copy of that?

18 THE COURT: All right. That's in.

19 MR. DELINSKY: Your Honor, we do, that's in  
17:50:09 20 the same bucket, that's the Purdue-produced document that  
21 Dr. Lembke --

22 THE COURT: Look, get this all straight end  
23 out overnight and I'll deal with it in the morning.

24 I can't tell what the heck you're all  
17:50:24 25 doing. All right?

1 Any Purdue document that I'm going to  
2 insist on a CVS witness coming in and testify that it's  
3 not a CVS document, then I'll have to make a decision.

4 MR. LANIER: Your Honor --

17:50:38 5 THE COURT: That it's bogus. All right.  
6 Fine. If someone from CVS comes in and says they don't  
7 think it's authentic, that it was not sent by CVS, you  
8 know, fine. Let the jury -- you know --

9 MR. LANIER: Thank you, Judge.

17:50:51 10 These -- everything I said comes right in  
11 with Rule 11, 901 and 902.

12 THE COURT: Not if there's a challenge to  
13 authenticity and there is so I've got to hear some  
14 testimony on it.

17:51:06 15 MR. WEINBERGER: So I want to reiterate  
16 again, Your Honor, that we started this process yesterday  
17 when I informed Special Master Cohen and the defendants  
18 of a list of --

19 THE COURT: I don't know if you -- you were  
17:51:17 20 supposed to all confer, and if there's by agreement, I  
21 can admit a whole lot of documents.

22 If there's not, both sides are going to be  
23 spending a whole lot of time not on the merits of this  
24 but bringing in witnesses challenging authenticity so  
17:51:31 25 fine.

1 MR. WEINBERGER: So can we get a response  
2 to that e-mail that listed a number of --

3 MR. DELINSKY: If the e-mail is complete,  
4 we need to see the witnesses with the documents that you  
17:51:44 5 intend to --

6 THE COURT: Well, that's irrelevant,  
7 Mr. Delinsky.

8 MR. DELINSKY: It's not, Your Honor. It's  
9 not irrelevant to us. We don't believe documents should  
17:51:52 10 be admitted in a case, absent testimony about what they  
11 are and what they mean.

12 THE COURT: Oh, hold it.

13 There is no way, and I'm going to apply it  
14 to you, I'm not going to allow --

17:52:02 15 MR. DELINSKY: I'm okay with that, Your  
16 Honor. I'll live with that rule. That's the way I've  
17 always handled trials.

18 You don't just introduce documents  
19 and -- take off your headphones.

17:52:28 20 MR. WEINBERGER: Your Honor can I give you  
21 a simple example?

22 THE COURT: Not any more. If you guys want  
23 to waste all your time.

24 MR. WEINBERGER: We don't. We don't want  
17:52:35 25 to.

1 THE COURT: They will waste their time,  
2 too.

3 MR. WEINBERGER: That's exactly the point.  
4 We don't want to.

17:52:40 5 THE COURT: You may not need any documents.

6 MR. WEINBERGER: Let me give an example of  
7 a document we need.

8 THE COURT: Bring in a witness that talks  
9 about that document.

17:52:50 10 All right.

11 MR. WEINBERGER: Well, Your Honor, there  
12 were millions and millions of documents produced in this  
13 case.

14 We were limited in the number of  
17:52:56 15 depositions we could take in this case.

16 We've been operating under the assumption  
17 that if a document came from the defendants' files and it  
18 was -- and it was properly authenticated as a result of  
19 that, that we could move for admission of that document  
17:53:18 20 as appropriate.

21 Now, let me give you an example.

22 THE COURT: Well, I agree with that.

23 MR. WEINBERGER: But I want to give an  
24 example, Your Honor, if I may.

17:53:25 25 Because one set of exhibits that we

1 produced yesterday included the contracts 2009 CVS and  
2 I.M.S. whereby they sold their data.

3 THE COURT: Right.

4 MR. WEINBERGER: Okay?

17:53:37 5 That was mentioned in opening statement and  
6 was discussed by Tom Davis during his testimony.

7 All right?

8 Not only do we have those documents from  
9 the defendants' own files, we have the documents from  
17:53:50 10 I.M.S., and we have a certification from I.M.S.

11 THE COURT: Okay. Those are going to come  
12 in.

13 All right?

14 MR. DELINSKY: No, they are not, Your  
17:53:58 15 Honor, because they are not relevant under 402. There's  
16 a whole set of issues.

17 The issues in this case, Your Honor, is  
18 whether any defendant or CVS in this case violated the  
19 CSA or whether we acted intentionally in dispensing  
17:54:13 20 illegitimate opioid prescriptions in a way that furthered  
21 the opioid crisis.

22 THE COURT: Mr. Delinsky, if you want to  
23 argue relevancy, you can.

24 I'll overrule that. They are clearly  
17:54:25 25 relevant.

1 MR. DELINSKY: Well, that's more error.

2 THE COURT: These records are

3 presumptively --

4 MR. DELINSKY: They are not presumptively

17:54:33 5 relevant, Your Honor.

6 THE COURT: No, they are

7 presumptively admissible. They are not presumptively

8 relevant.

9 It is making a fact in issue more probable

17:54:47 10 than not.

11 MR. DELINSKY: So with what fact in issue

12 does a contract with I.M.S. that we provided I.M.S. with

13 data, what facts in this case --

14 THE COURT: Were you listening to the

17:54:58 15 testimony and the arguments? It's directly relevant.

16 MR. DELINSKY: How?

17 THE COURT: It's directly relevant.

18 MR. DELINSKY: I heard Mr. Davis.

19 How is that relevant to whether CVS

17:55:08 20 violated the CSA? How is that relevant to whether

21 CSA --

22 THE COURT: It goes to whether the

23 defendants turned over, essentially outsourced to Purdue

24 something that they should have been doing themselves and

17:55:21 25 monitoring it.

1 It's very highly relevant.

2 MR. DELINSKY: It doesn't go to Purdue. It  
3 went to I.M.S., Your Honor. There's no testimony it went  
4 to Purdue.

17:55:30 5 THE COURT: I've moved on, okay? You guys  
6 deal with this yourselves.

7 All right?

8 I don't know if you've admitted any  
9 documents so I can't tell what you want to do.

17:55:42 10 There were four documents. I reserved two.  
11 I don't even know what the other two are.

12 CVS brochure, 173228 I've admitted and I've  
13 admitted 259 -- 25884. The other two I guess they're  
14 being reserved until I determine if they're authentic.

17:56:01 15 That's P 08658 and P 08663. CVS is  
16 challenging the authenticity so I'll wait until I see the  
17 CVS witness as to whether they're authentic.

18 If I find they're authentic, they'll come  
19 in. If I find they're not, they won't.

17:56:19 20 If I have to do that with a whole lot of  
21 documents again, you're all going to be wasting your time  
22 in this trial and the jury will be bored out of their  
23 minds but I'm not going to try your case for you or try  
24 your defense.

17:56:35 25 MR. WEINBERGER: Thank you, Judge.

MR. DELINSKY: Thank you, Your Honor.

(Proceedings concluded at 5:56 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

**/s/Susan Trischan**

/S/ Susan Trischan, Official Court Reporter  
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